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PART II

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

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MILK IN DES MOINES, IOWA AND CERTAIN OTHER AREAS

Tentative Marketing Agreement and Orders; Recommended Decision and Opportunity to File Exceptions

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Parts 1063, 1070, 1078, and 1079]

[Docket No. AO-295-A32, etc.]

MILK IN THE DES MOINES, IOWA AND CERTAIN OTHER MARKETING AREAS

Notice of Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

7 CFR part	Marketing area	Docket No.
1079	Des Moines, Iowa	AO-295-A32
1070	Cedar Rapids-Iowa City	AO-229-A32
1078	North central Iowa	AO-272-A27
1063	Quad Cities-Dubuque	AO-105-A43

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and orders regulating the handling of milk in the aforesaid marketing areas.

Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250, on or before January 26, 1977. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The above notice of filing of the decision and of opportunity to file exceptions thereto is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Preliminary Statement

The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreements and to the orders as amended, were formulated, was conducted at Des Moines, Iowa, on March 29 to April 2, 1976, pursuant to notice thereof which was issued on March 9, 1976 (41 FR 10612).

The material issues on the record of the hearing relate to:

1. Whether the handling of milk produced for sale in the proposed merged marketing area is in the current of interstate commerce, or directly burdens, obstructs, or affects interstate commerce in milk or its products;

2. Whether the aforesaid marketing areas should be included under one order;

3. Whether any proposed marketing area should be expanded to include additional territory in the States of Iowa, Illinois, and Missouri; and

4. The appropriate provisions of any proposed merged order with respect to:

(a) Milk to be priced and pooled;

(b) Classification of milk;

(c) Class prices, location adjustments, and the butterfat differential;

(d) Distribution of proceeds to producers; and

(e) Administrative provisions.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Character of commerce.* The handling of milk in the proposed Iowa marketing area is in the current of interstate commerce and directly burdens or affects interstate commerce in milk and milk products.

The proposed marketing area, designated the "Iowa marketing area," will include the present marketing areas of Orders 63 (Quad Cities-Dubuque), 70 (Cedar Rapids-Iowa City), 78 (North Central Iowa), and 79 (Des Moines, Iowa), and 22 other Iowa counties between or adjacent to these four marketing areas.

Milk procurement in this area crosses state boundaries. During 1975, handlers regulated by the Quad Cities-Dubuque order procured milk in Iowa, Minnesota, Illinois, and Wisconsin; handlers regulated under the Cedar Rapids-Iowa City order procured milk in Iowa and Minnesota; handlers regulated under the North Central Iowa order procured milk in Iowa, Minnesota, and Illinois; and handlers regulated under the Des Moines order procured milk in Iowa, Minnesota, Illinois, Wisconsin, and Missouri.

Handlers regulated under the Iowa orders dispose of fluid milk products in neighboring states. Similarly, handlers regulated under Federal orders in neighboring states dispose of fluid milk products in each of the Iowa marketing areas. In addition to the Interstate movements of bulk milk or packaged fluid milk products, there are numerous manufacturing plants within the proposed marketing area that produce manufactured dairy products for sale in other states.

2. *Need for merger of orders.* Marketing conditions in the four separately regulated marketing areas under consideration justify merger of the orders regulating the handling of milk in these areas.

Federal regulation of milk marketing in the Iowa area was first initiated on October 1, 1936, with the establishment of the Dubuque, Iowa, order. The Quad Cities order was established in 1940, followed by the Clinton, Iowa, order in 1944. These three markets were merged into the Quad Cities-Dubuque order on January 1, 1961. The marketing area was expanded to include the Illinois counties of Mercer and Henry on February 1, 1965.

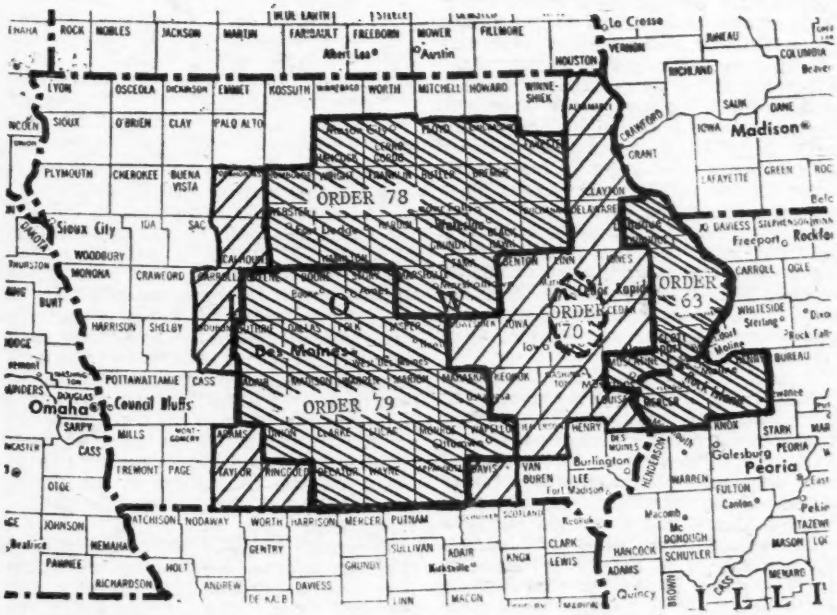
The Cedar Rapids-Iowa City order became effective on September 1, 1951. The marketing area has remained unchanged since its inception.

The North Central Iowa order became effective on November 1, 1957. The marketing area was expanded on December 1, 1959 and has not been modified since that time.

The Des Moines order was promulgated on October 1, 1958. The marketing area has not been changed since then.

The present marketing areas of the four Iowa orders and the proposed merged and expanded Iowa marketing area are shown on the following map.

PROPOSED IOWA MARKETING AREA



The merger of all four markets was proposed by Associated Milk Producers, Inc. (AMPI), Land O'Lakes, Inc. (LOL), Mid-America Dairymen, Inc. (MID–AM), Mississippi Valley Milk Producers Association (MVMPA), and National Farmers Organization (NFO). These cooperative associations represent producers supplying milk to one or more of the four Iowa orders.

There was no opposition expressed to merging the four markets.

The basic reasons given by proponents for merging the several orders include the following: (a) Overlap of Class I distribution, (b) overlap of procurement areas; and (c) changes in market structure and inaccessability of markets to producer groups seeking to supply those markets.

A. *Overlap of Class I distribution.* The range of distribution by regulated handlers has expanded greatly since these four orders were promulgated. The reasons for this expansion are varied, but generally can be attributed to the spread of urbanized areas, better roads, improved technology, economies of large scale operation, and reciprocity of health standards.

As handlers have extended their range of distribution, they have increasingly disposed of fluid milk products in the marketing areas of neighboring orders. In October 1795, only 52 percent of the packaged fluid milk products disposed of in the Order 63 marketing area came from handlers fully regulated under that order. Eighteen percent of the sales came from handlers regulated under Orders 70, 78, or 79, and the remaining 30 percent came from handlers regulated under the Chicago Regional order (Order 30), the St. Louis-Ozarks order (Order 62), the Central Illinois order (Order 50), the Southeastern Minnesota-Northern Iowa order (Order 61), and the Southern Illinois order (Order 32).

In the Cedar Rapids-Iowa City market, 68 percent of the packaged fluid milk products sold on routes during October 1975 were disposed of by handlers fully regulated under Order 70. Eighteen percent of the sales were made by handlers regulated under Orders 63 and 79, while the remaining 14 percent were made by handlers regulated under Orders 30, 50, and 61.

During the same month, only 45 percent of the fluid milk products sold on routes in the North Central Iowa marketing area were made by handlers regulated under Order 78. Forty percent of the sales were made by handlers regulated under Orders 63, 70, and 79, and the remaining sales were made by handlers regulated under Orders 61 and 65 (Nebraska-Western Iowa).

In the Des Moines market, 87 percent of the packaged fluid milk products sold on routes came from fully regulated Order 79 handlers during March 1975. Five percent of the sales came from handlers regulated under Orders 63, 70, and 78, and the remaining 8 percent came from handlers regulated under Orders 30, 61, 64 (Kansas City), and 65.

The above figures indicate a substantial overlap of Class I route disposition by handlers regulated by each of the four Iowa orders. They illustrate that the four regulated areas have lost their identity as distinct markets and actually constitute one marketing area.

Producers supplying a common marketing area should receive a common uniform price. As shown later, however, this has not been the case under the four separate orders. Merger of the four markets will allow all producers supplying the single Iowa marketing area to share equally in the returns generated by that market.

B. *Overlap of procurement areas.* The procurement area for the four Iowa markets is largely confined to three crop reporting districts—the southern district in Minnesota and the northeastern and east central districts in Iowa. In December 1975, these three districts provided about 92 percent of the milk pooled under Order 63, 95 percent of the milk under Order 70, 79 percent of the milk under Order 78, and 52 percent of the milk under Order 79. The northeastern Iowa district alone, which consists of a block of 11 counties, accounted for 62 percent of the producer milk on Order 63, 60 percent of the milk on Order 70, 50 percent of the milk on Order 78, and 35 percent of the milk on Order 79. All of the proponent cooperative associations have member producers in this district.

When similarly located producers receive different prices for their milk, orderly marketing is threatened. Such circumstances could result in a cooperative providing services at below cost to a handler to get its member producers pooled on a particular market. (This would mean, in turn, non-uniform prices to handlers.) It could also result in changes in cooperative affiliation simply for the purpose of getting in a particular pool, or it could mean payments by one cooperative to another for the privilege of using the latter's pool plant as a pooling base. Fortunately, these things have not yet occurred to any great extent in the Iowa markets, although the potential for such disruption is certainly present.

Of the 19 cooperatives operating in the four Iowa markets in January 1976, five had producers on at least two of the markets. Three of these five cooperatives have more producer milk pooled on these four markets than the remaining 11 cooperatives combined. Because these larger cooperatives have followed a prac-

tice of "reblending" returns to their producers, they have been able to mitigate differences in order uniform prices by paying their producers a price that is competitive with that paid by other cooperatives in a particular area. The fact that such reblending has been taking place is evidence that the four separate marketing areas, in actuality, are not separate markets for different groups of producers. It is clear that orderly marketing can best be insured for the future by effecting uniform prices to producers supplying these markets by merging the four markets into a single marketing area.

C. *Market structure and accessibility.* Substantial changes in the operations of milk handlers and cooperative associations have modified the marketing of milk in the Iowa markets. These changes, which have been virtually continuous over the past 15 years (1960–1975), have affected dairy farmers' participation in the returns for milk priced under these orders.

One such change is the number of pool distributing plants. Fluid milk processing plants in these markets have become fewer in number, but generally larger in capacity. The decline in number of plants is shown in the following table:

TABLE 1.—*Pool distributing plants, 4 orders, December 1960, 1970, and 1975—Number of pool distributing plants*

	December—		
	1960	1970	1975
Order No.:			
63	19	12	7
70	5	3	3
78	32	6	3
79	21	12	8
Total	77	33	21

The Iowa markets are somewhat unique in that in each of these markets a major pool distributing plant is owned by a cooperative association. Land O' Lakes operates a distributing plant located at Cedar Rapids that is regulated under Order 63; Mid-America Dairymen, Inc., operates Home Town Dairies, Inc., which is located at Iowa City and regulated by Order 70; Mississippi Valley Milk Producers Association operates Carnation Fresh Milk at Waterloo, Iowa, which is regulated by Order 78; and Prairie Farms Dairy, Inc., operates Flynn Dairy, which is located at Des Moines and regulated by Order 79.

It is noteworthy that, while three of the major cooperatives have guaranteed entry ot the respective markets through such plants, they nevertheless have proposed merging the markets in the interest of stability and orderly marketing.

The instability that can result from the separate markets is evident by the shifts in regulation of plants from one market to another in response to slight shifts in sales patterns. From January 1971 through December 1975, for example, the Land O'Lakes plant at Cedar Rapids was regulated, in succession, for 4 months under Order 63, 4 months under Order 78, 6 months under Order 63, 5 months under Order 78, 10 months under Order 63, 2 months under Order 78, 22 months under Order 63, one month under Order 78, and 6 months under Order 63. The Mid-America supply plant at Marion, Iowa, was regulated, in succession, for 7 months under Order 70, one month under Order 79, one month under Order 70, 4 months under Order 63, 2 months under Order 70, one month under 63, one month under Order 70, 2 months under Order 63, 8 months under Order 70, 2 months under Order 63, one month under Order 70, 2 months under Order 63, and 28 months under Order 70. Another Mid-America supply plant, at Sully, Iowa, has been regulated under all four Iowa orders at various times from 1971 through 1975.

These shifts in regulation demonstrate the small size of the markets involved to the increasingly widespread distribution of sales by handlers. It is, indeed, unusual for a plant located in one marketing area—the Land O'Lakes plant at Cedar Rapids—to be alternately regulated in two other marketing areas. The shifts in regulation also underscore the common procurement area for these markets, which is evident by the fact that a single supply plant has at various times supplied enough milk to each of the four markets to be regulated under each order.

With the major distributing plants under Orders 63, 70, and 78 operated by cooperative associations, the access to these markets by other cooperatives has been limited. As a result, in December 1975, there were only 3 co-ops marketing milk under Order 70, 3 co-ops marketing milk under Order 63, and 6 co-ops marketing milk under Order 78. By contrast, there were 12 co-ops marketing milk under Order 79 in December 1975. Although Prairie Farms Dairy, Inc., a cooperative, operates a large distributing plant under Order 79, it relies on other cooperatives to furnish a supply of milk.

While a merged order will not necessarily increase access to the cooperatives' pool distributing plants, it will, in combination with the pooling standards adopted herein, provide greater access to the market as a whole and will allow more equitable sharing of the returns available from the four separate markets.

Market structure and marketing practices are important in evaluating the effect of separate order regulations compared to a single order for the entire area. This is illustrated in the comparison of the proportions of milk supplies used in Class I in the several order markets. Specifically, in the Cedar Rapids-Iowa City and North Central Iowa markets, there is a substantially higher proportion of milk supplies used in Class I than in the other two markets, as shown in Table 2.

TABLE 2.—*Class I utilization percentage Iowa orders, 1971–75*

	Order—				Combined
	63	70	78	79	
1971	54	61	66	54	57
1972	48	81	64	53	56
1973	55	85	81	52	59
1974	52	65	88	49	55
1975	46	62	79	50	54
Average	51	71	76	52	56

Orders 70 and 78, which in each case had only three pool distributing plants in December 1975 compared to 7 and 8 for Orders 63 and 79, experienced significantly higher Class I utilizations than did Orders 63 and 79. This reflects the limited access to these two markets. In the case of Order 78, which is an individual handler pool, it also reflects each handler's incentive to keep reserve milk supplies to a minimum, thereby maintaining a high Class I utilization and a high uniform price to his producers. (In an individual handler pool market, each handler pays producers a uniform price based on the utilization in his plant, rather than the market's average utilization value.)

The effect of different Class I utilizations on returns to producers under the four orders is manifested through the uniform price. The average uniform prices for the years 1971 through 1975 for the four orders are shown in Table 3.

TABLE 3.—*Average uniform price, Iowa orders, 1971–75*

	Order—			
	63	70	78 [1]	79
1971	5.48	5.67	5.63	5.61
1972	5.68	6.08	5.84	5.82
1973	6.79	7.10	6.98	6.86
1974	7.82	8.00	8.37	7.88
1975	8.10	8.21	8.35	8.21
Average	6.77	7.01	7.03	6.88

[1] Uniform prices shown are weighted average of all handlers.

Even though the Class I differentials of Orders 70 and 78 are only $1.33 and $1.25, respectively, compared to $1.40 and $1.33 for Orders 79 and 63, the uniform prices of Orders 70 and 78 have generally been significantly higher than the uniform prices of Orders 63 and 79. This is due to the higher Class I utilizations of these markets.

The uniform price differences among the four orders have not been conducive to orderly marketing. The four orders in their present form have failed to provide dairy farmers with the opportunity to share equally in market returns, even though the bulk of the Grade A milk pooled is situated in the same general area and is available to all of the four markets.

The aforementioned overlap in Class I distribution, the overlap in procurement area, and the inability of producers in

this area to share equally in the returns from this common sales and procurement area indicate a need for modification of the form of order regulations. The separate regulations for Orders 63, 70, 78, and 79 are not achieving a proper distribution of returns from these markets among the milk supplies immediately to them. As a result, there are disparities in conditions affecting producers marketing their milk under the several orders which will likely result in disorderly marketing conditions if the orders are maintained in their present form. Since roughly half of the milk in Iowa is still manufacturing grade milk, the situation will become increasingly severe as producers of manufacturing grade milk convert to Grade A and seek a market outlet.

Producers can be expected to sell their milk on that market which returns the highest price. In the Iowa markets, this has not been possible because there are certain barriers to market entry. These barriers include: (1) The limited number of pool distributing plants through which to pool milk (especially in the Cedar Rapids-Iowa City and North Central Iowa markets); (2) the fact that cooperative associations operate most of the major pool distributing plants; (3) the individual handler pool in the North Central Iowa market (which discourages the pooling of reserve milk supplies because that results in a lower uniform price for the handler pooling the milk); (4) traditional supply patterns (which impede entry of new cooperative associations on the market); and (5) the pooling standards now in the separate orders (which, of necessity, limit the pooling of milk to that milk associated with distributing plant outlets in the respective markets).

Merger of the four orders will remove the basic problem of nonuniform sharing of market proceeds among all of the Grade A producers in this area. It will also promote greater efficiency in the moving and handling of milk. Present efforts of cooperative associations and handlers to pool on these markets the milk produced in associated production areas have, at times, involved movements unrelated to economical supply systems for a particular market. This is particularly true in the case of supplies moved to more distant markets for lack of a pooling outlet in Iowa. In conjunction with the pooling standards adopted herein, the merged order will provide a broader base for pooling Grade A milk supplies produced within and close to the proposed marketing area and will reduce uneconomic milk handling resulting from cooperatives attempting to maintain or adjust levels of Class I utilization in individual markets.

3. *Additional territory to be regulated.* The merged Iowa marketing area should include additional unregulated territory comprised of 22 Iowa counties, including Linn and Johnson Counties, part of which are now regulated.

AMPI, LOL, MID-AM, and MVMPA (hereinafter referred to as Proponent No. 1) proposed the inclusion of 18 unregulated counties (including Linn and Johnson). The territory extends from Clayton County in northeastern Iowa to the Missouri border and includes the counties of Clayton, Delaware, Benton, Linn, Jones, Poweshiek, Iowa, Johnson, Cedar, Keokuk, Washington, Louisa, Jefferson, Henry, Des Moines, Davis, Van Buren, and Lee.

NFO also proposed inclusion of these 18 counties and also Allamakee County in northeastern Iowa. In addition, NFO proposed inclusion of 12 counties to the west of Orders 78 and 79. These counties include Dickinson, Emmet, Clay, Palo Alto, Buena Vista, Pocahontas, Calhoun, Carroll, Audubon, Adams, Taylor, and Ringgold. At the hearing, NFO suggested that Dickinson, Emmet, Clay, and Palo Alto Counties should not be included in the Iowa marketing area but should be reserved for inclusion in the Nebraska-Western Iowa marketing area or any merged order including that market. However, in its brief, NFO stated that these four counties should be included in the Iowa marketing area.

A third proposal regarding marketing area was submitted by Beatrice Foods Company. Beatrice proposed adding 13 unregulated Iowa counties, 18 unregulated northeastern Missouri counties, and Adams County, Illinois, to the merged marketing area. However, no spokesman for Beatrice appeared at the hearing to support this proposal when it came up on the agenda, and the Administrative Law Judge ruled the proposal abandoned. The Iowa counties proposed by Beatrice were proposed and supported by the other merger proponents at the hearing. No other parties proposed or supported inclusion of the other territory proposed by Beatrice, but several handlers went on record as opposing any such proposal.

Fifteen of the 19 unregulated Iowa counties to the east of Orders 78 and 79 should be included in the merged marketing area. These counties include all all of those proposed at the hearing with the exception of Lee, Des Moines, Van Buren, and Henry Counties in the southeastern corner of Iowa. A majority of the sales in each of these counties are made by handlers regulated under the four Iowa orders.

There is only one unregulated distributing plant located in the 15 now-unregulated counties proposed for inclusion in the merged order. This is Superior Dairy at Tipton, Iowa, which is part of Cedar County. Testimony by merger proponents indicated that 98 percent of the Class I sales through stores in this county are made by handlers fully regulated under Orders 63 and 70 and that the remaining 2 percent are made by a handler regulated under the Central Illinois order. Another witness, a sales manager for Land O'Lakes, Inc., testified that these figures conform reasonably well to his knowledge of the area, although he did state that the figures would change somewhat if home delivery and institutional business were taken into account.

Testimony at the hearing indicates that Superior Dairy's sales are confined to Cedar County and constitute a small portion of the total Class I sales in that county. Nevertheless, the overwhelming proportion of the Class I sales in Cedar County and those counties that surround it by regulated Iowa handlers indicates that this county is an integral part of the sales area for such handlers. Thus, Cedar County should be included in the merged marketing area to insure equity among competing handlers. Although Superior Dairy's area of competition is relatively limited, the unregulated status of this plant can still provide this distributor with a cost advantage on raw milk supplies relative to the regulated handlers who must pay minimum class prices for their milk. Moreover, it is apparent that Superior Dairy's milk supply is produced in competition with presently regulated Iowa handlers, since nearly all the Grade A milk produced in this county is marketed under the Iowa orders. Thus, regulation of the Tipton handler under the Iowa order will tend to insure uniformity in returns to producers located in this county.

No one from Superior Dairy either appeared at the hearing or filed a brief expressing any opposition to inclusion of Cedar County in the merged marketing area.

With respect to the unregulated territory in the southeastern corner of Iowa, a Quincy, Illinois handler, in his brief, opposed expansion of regulation in this area. He contends that regulation of the small handlers in Burlington (Des Moines County) and Fort Madison (Lee County) would place such handlers in a difficult position in competing for a supply of milk.

The southeastern corner of Iowa is on the fringe of the main sales territory of presently regulated Iowa handlers. Much of the fluid milk sales into this area originates from plants regulated under the Central Illinois, Southern Illinois, and Chicago Regional milk orders. A small proportion of the fluid milk sales business is by local unregulated plants. The primary Federal order market outlets for milk produced in this area are the Southern Illinois and St. Louis-Ozarks markets.

In Henry, Lee, and Van Buren Counties, the majority of the fluid milk sales are not made by handlers regulated under the four Iowa orders. In Van Buren County, only 23 percent of the sales are made by Iowa handlers; in Henry County, 48 percent; and in Lee County, only 18 percent.

According to the data collected by Mid-America Dairymen, Inc., 53 percent of the sales in Des Moines County are made by Iowa handlers, and 37 percent of the sales are accounted for by handlers regulated under other orders. Ten percent of the sales in this county are accounted for by an unregulated distributing plant, Gustafson's Sunshine Dairy, at Burlington, Iowa. This handler is apparently very small in terms of volume. His distribution—as can be ascertained from the limited information on the record—is limited to the counties of Des Moines, Henry, Washington, and Louisa. He buys all of his milk from nonmember producers, although he occasion-

ally purchases supplemental milk from Mississippi Valley Milk Producers Association. According to one witness, this handler pays his producers a price competitive with the uniform price under the Southern Illinois order, adjusted for the Burlington location.

There are also two unregulated handlers located in Lee County. The Blue Grass Dairy at Fort Madison is a producer-handler and has limited sales only in Lee County. Freesmeir's Home Town Dairy, which is also located at Fort Madison, has sales in Lee County and also in northern Missouri and, perhaps, Illinois.

The testimony on the record does not indicate that these three unregulated handlers have been a disruptive factor in southeastern Iowa. To regulate them would require inclusion of territory that, at this point, is not closely related—in terms of sales and procurement—to the rest of the proposed marketing area. It is also questionable whether the uniform price generated by the merged order would enable these handlers to hold a milk supply in competition with handlers under the Southern Illinois and St. Louis-Ozarks orders. For these reasons, the four Iowa counties of Van Buren, Lee, Henry, and Des Moines should not be included in the Iowa marketing area.

The Iowa marketing area should also include seven now-unregulated counties to the west of Orders 78 and 79. These counties are Pocahontas, Calhoun, Carroll, Audubon, Adams, Taylor, and Ringgold. Five other counties—Dickinson, Emmet, Clay, Palo Alto, and Buena Vista—should not be incorporated in the new marketing area.

All of these 12 counties were proposed by the National Farmers Organization. Other parties indicated either support or indifference to inclusion of these 12 counties in the marketing area.

There are no distributing plants located in any of these seven counties proposed herein to be included in the marketing area. No new plants will become regulated as a result of their inclusion in the marketing area. However, to assure that orderly marketing conditions prevail as orders are merged and enlarged in this general area, these seven counties should be brought under the merged Iowa marketing area.

A survey by NFO showed that in each of these seven counties the majority of sales to supermarkets were made by handlers regulated under Orders 78 and 79. In each of the other five counties, the majority of such sales were made by handlers regulated under Orders 65 (Nebraska-Western Iowa) or 76 (Eastern South Dakota). In view of this, the latter five counties should not be included in the Iowa marketing area.

A proposal to remove seven—amended at the hearing to eight—countries (Union, Clarke, Lucas, Monroe, Appanoose, Wayne, Decatur, and Ringgold) from the Des Moines, Iowa, marketing area must be denied. The proponent handler, Jones Dairy, Inc., Corydon, Iowa, testified that 15 producers supplying his plant did not want the marketing service charge of 5 cents per hundredweight increased to 6 cents, which was one of the proposals for the merged order. Proponent also contended that the market administrator was losing money having to sample the milk of the handler's producers and audit his plant, which is located 85 miles from the market administrator's office. Moreover, he stated it takes up some of his own time to fill out reports to the market administrator.

Proponent handler testified that 65 percent of his Class I sales are within the eight counties proposed for exclusion. At least two other fully regulated handlers located at Des Moines also do business in this eight-county area. In addition, a fully regulated handler located at Ottumwa, Iowa, competes in several of these counties. The remainder of his sales are in Missouri territory where he competes with Order 79 handlers and a Federal order handler whose plant is in St. Joseph, Missouri. Proponent testified that he purchased milk from a cooperative association to supplement his own producers' milk during the short production months of the year.

Proponent would have a substantial price advantage over his competitors if he were not required to pay the classified use value for his milk. If the handler did pay his producers the classified use value for his milk—as he says he would, this would result in a wide disparity in returns among producers supplying milk for sale in the 8 counties because the handler's use value would be well above the uniform price under the merged order.

There is no basis to exclude this handler from regulation merely because he would like to avoid the costs of administration of the order. Even though he testified he would pay his producers on a classified use basis, there is no certainty this would be so in the absence of an actual audit.

The continued regulation of this eight-county area is necessary to insure orderly marketing under the merged order. Accordingly, the proposal is denied.

4. (a) *Milk to be priced and pooled.* It is necessary to designate clearly what milk and which persons would be subject to the merged order. This is accomplished by providing definitions to describe the persons, plants, and milk to which the applicable provisions of the order relate.

The following provisions included in the proposed order will serve to identify the specific types of milk and milk products to be subject to regulation and the persons and facilities involved with the handling of such milk and milk products. Definitions relating to handling and facilities are "route disposition," "plant," "pool plant," and "nonpool plant." Definitions relating to milk and milk products include "produced milk," "fluid milk product," "fluid cream product," "filled milk," and "other source milk." A number of these definitions were of particular issue at the hearing and are discussed below.

Route disposition. A definition for "route disposition" is a convenience for specifying the various kinds of fluid milk sales outlets that will be considered in determining whether a distributing plant would be regulated under the order. At present, none of the four Iowa orders has a route disposition definition; however, the substance of such a definition is included in the distributing plant and pool plant definitions.

As adopted herein, route disposition would include any delivery of a fluid milk product classified as Class I milk, other than bulk fluid milk products transferred to other plants. It would include a delivery by a vendor or disposition at a store located on the plant premises. It would also include packaged fluid milk products transferred to other plants—pool plants or nonpool plants.

Two different route disposition definitions were proposed at the hearing. The proposal by Proponent No. 1 defined route disposition as "a delivery (including disposition from a plant store or from a distribution point and distribution by a vendor or vending machine) of any fluid milk product classified as Class I milk to a retail or wholesale outlet other than a pool plant or a nonpool plant."

A slightly different proposal by Prairie Farms Dairy, Inc., defines route disposition as "distribution of Class I milk by a handler to retail or wholesale outlets which include vending machines but do not include plants or distribution points."

It was the expressed desire of both proponents that final route disposition of a product would occur only when control and title of the product are transferred from one party to another. Thus, proponents would not consider transfers of fluid milk products from a handler's plant to a distribution point of the handler off the premises of the plant as a final disposition.

This issue—when "disposition" occurs—is involved with accounting and pricing of milk. Under the terms of each of the Iowa milk orders, a fluid milk product is considered disposed of on a route when it leaves the plant (except when delivered to another plant). The handler must account for the product at the Class I price. This has generally been reasonable, since in most instances the handler has made final use of the product at the time of disposition from the plant. When a fluid milk product is in inventory at the plant at the end of the month, the handler is only required to account for the product at the Class III price.

The problem concerning Prairie Farms arises because Prairie Farms, like many other handlers, operates a distribution point off the premises of the plant. Therefore, even though a fluid milk product leaves its plant—and, accordingly, is priced as Class I—it is not unusual for the product to be in inventory at the distribution point at the end of the month. According to the Prairie Farms witness, this necessitates keeping two sets of inventories—one for the administrator and the other for the company's records based on "generally accepted accounting principles".

It would be an undue administrative burden on the market administrator to adopt the route disposition concept suggested by proponents.

It is common knowledge that many handlers in the Iowa market have distribution points and/or retail outlets in several locations and even several states. Under these circumstances, it might take the entire audit staff of the market administrator to make a physical inventory of one handler on the last day of a given month.

The "transfer of title" principle expounded by proponents cannot be faulted logically. Similarly, the problems described by Prairie Farms cannot be dismissed lightly. On balance, however, the benefits to be reaped from incorporating their concept in the order cannot justify the additional time, travel, and administrative expense that would necessarily be involved. For these reasons, the proposal is denied.

Plant. A "plant" definition should be provided for the purpose of designating the type of handling facilities to which the order provisions would apply. As defined under the merged order, a plant would be the land, buildings, facilities, and equipment that constitute a single operating unit at which milk or milk products are received, processed, or packaged. Separate facilities used solely as intermediary distribution points in the disposition of packaged fluid milk products would not be plants. Similarly, separate facilities at which milk is only reloaded from one tank truck to another would not be a plant as defined herein.

None of the four orders provide for the pricing or pooling of milk at a reload point. It is not intended under the merged order that facilities that are used only for the reloading of milk from one tank truck to another be the pricing point for milk so handled. A reload operation must be distinguishable, however, from facilities at which milk handled is to be priced.

It is not usual for milk to be received, processed, or packaged at a reload point. Rather, it is customary for milk that has been picked up at the farm by several tank trucks to be brought to the reload point and transferred directly to a large over-the-road tank truck for movement to processing plants. In this circumstance the identity of the producer milk that is transshiped in the over-the-road tank truck is ascertainable. Thus, it is not necessary to consider milk as being received at a reload point for purposes of accounting for an individual producer's milk. Accordingly, any facility at which milk from farms is only reloaded onto another tank truck is a reasonable means of identifying a reload facility.

Situations could arise where the individual producer identity for milk handled at reload points is lost. Some of the milk on a farm pick-up tanker could be reloaded onto an over-the-road tank truck and delivered to a pool plant while the remaining milk on the farm truck is held overnight in a tank truck and perhaps transported to another plant (either pool or nonpool) the next day. In this situation, it is not possible to know which producer's milk was delivered to which plant on which day. It is necessary, nonetheless, for the order to provide for the pricing of the milk of those dairy farmers at a plant location. Under these circumstances, the milk of individual producers involved should be prorated between the plants at which their commingled milk was received.

As described later in this decision, it is provided that milk picked up at a producer's farm during the month in a tank truck owned and operated by, or under the control of, a handler (including a cooperative association in its capacity as a bulk tank handler) but which is not received at a plant until the following month shall be considered as having been received by the handler during the month in which it is picked up at the producer's farm and shall be priced at the location of the plant where the milk is physically received in the following month. These guidelines are discussed later in more detail under the heading "Producer milk."

Pool plant. Essential to the operation of a marketwide pool is the establishment of minimum performance standards to distinguish between those plants engaged in serving the fluid needs of the regulated market and those plants that do not serve the market in a way or to a degree that warrants their sharing (by being included in the pool) in the Class I utilization of the market. The pooling standards for distributing plants and supply plants that are contained in the attached order have been structured to accomplish this.

The "pool plant" definition adopted herein sets forth all of the various performance standards that plants must meet to qualify for pooling. For this reason, definitions of a "distributing plant" and a "supply plant," as contained in the individual orders, are not needed. Reference is made in this decision to such types of plants, nevertheless, since the adopted pooling standards relate to plants performing different types of functions in the market.

The following discussion sets forth the pooling standards that should apply to the several types of plants. To facilitate the discussion, it is noted that the pooling standards for a distributing plant or a supply plant provide that the plant's required association with the market shall be measured in terms of the proportion of its milk supply that is disposed of in the market. It is intended that such milk supply shall include any producer milk that is diverted from the plant by the plant operator to other plants. Although diverted milk is not physically received at the plant from which diverted, it is, nevertheless, an integral part of that plant's supply of milk and acquires pool status by virtue of its association with such plant. Therefore, diverted milk must be included as a receipt for purposes of establishing the diverting plant's qualification for pooling.

Milk that a cooperative may divert from a pool plant (other than its own) should not be included in the plant's receipts for purposes of determining the plant's pool plant status. Milk handling arrangments in this market may make it difficult at times for a plant operator to know how much milk is being diverted from his plant by a cooperative. Consequently, his plant could fail to meet the pooling standards by virtue of diverted milk being associated with his plant without his knowledge. The diversion limitations discussed later will effectively limit diversions by a cooperative from another handler's plant to an appropriate level without the necessity of this milk being included as part of the pool plant's receipts.

Under the adopted standards, any distributing plant that is approved by a duly constituted regulatory agency for the processing or packaging of Grade A milk would be a pool plant if it meets certain performance standards during the month. Specifically, during September through November, a plant's "route disposition" must be not less than 40 percent of the bulk Grade A fluid milk products received at the plant during the month. During other months of the year, this requirement would be 35 percent. In addition, at least 15 percent of a plant's receipts should be disposed of as route disposition in the marketing area.

This definition is basically the same as the one proposed by Proponent No. 1, but with certain minor differences. Under proponent's proposal, all milk diverted from the plant would be included in the plant's receipts for pooling purposes. This is being modified for the reasons just noted.

Another difference is that proponent would require a pool distributing plant to have route disposition equal to 40 percent of its receipts during the months of September through January and 35 percent during all other months, as opposed to 40 percent during September through November and 35 percent all other months, as adopted herein. During 1975, the five highest Class I utilization months for the four orders combined were October (68.7 percent), September (68.2 percent), November (62.2 percent), December (58.7 percent), and January (56.9 percent). While it is somewhat arbitrary as to which months are chosen for the higher route disposition requirement, it would be logical to choose the same months—for the same reasons—that also apply to supply plant pooling standards and to diversion limitations, both of which will be discussed later. At present, however, and as proposed by Proponent No. 1, different months apply to all three categories, which is possibly a result of piece-meal amendment of the orders over time. In any event, it would appear that the months of September, October, and November are most clearly distinguishable as the high utilization months and would best serve as the high-performance, low-diversion period.

NFO proposed that the total route disposition requirement be set at the Class I utilization for the same month of the preceding year. This is the same kind of provision contained in the Upper Midwest order, which was presumably used as a model. Because of the much smaller size of the Iowa market compared to the Upper Midwest market, there could be considerably greater variation in Class I utilization in Iowa. For this reason, the Class I utilization for the same month of

the preceding year may not be a good indication of what the appropriate pooling standard should be for the current month. Accordingly, it is preferable in this order to adopt a fixed percentage as now in the four separate orders and as proposed by Proponent No. 1.

Presently, the total route disposition requirement for distributing plants under the Des Moines and Cedar Rapids-Iowa City orders is 35 percent during every month of the year. Under the Quad Cities-Dubuque order, it is 45 percent during September through January and 40 percent during February through August. Under the North Central Iowa order, the total route disposition requirement is an average of 1000 pounds per day.

The in-area route disposition requirements adopted herein fit closely with what was proposed and with what is currently in effect. They are reasonable in view of the expected Class I utilization of the merged order.

The total route disposition requirement is now 15 percent under all four orders. NFO proposed this same standard for the merged order. Although the other cooperative proponents proposed a 10 percent standard, their spokesman expressed no objection to retaining the 15 percent standard as a reasonable measure of a plant's association with the market. Thus, the 15 percent standard should be retained for the merged order.

Several variations of the supply plant provisions were proposed for the merged order. Proposal No. 1, as modified at the hearing, would provide for "unit pooling", which would allow two or more plants of one or more cooperatives (or one proprietary handler) to be combined in a unit for the purpose of meeting the shipping requirement under the order. Another feature of this proposal is that receipts at distributing plants directly from member producers' farms would be considered as having been shipped from a supply plant of the cooperative.

The shipping requirements of this proposal are 35 percent of Grade A receipts every month. However, if a plant shipped 50 percent during the immediately preceding period of September through November, it would have to ship only 20 percent during the following months of December through August.

The NFO proposed supply plant provisions requiring regular shipments every month and a "reserve supply plant" provision patterned after the one in the Upper Midwest order. The latter provision does not require regular shipments from a supply plant, but a "call" (or shipping requirement) is announced by the market administrator when he determines that shipments are needed.

A spokesman for AMPI stated at the hearing that his organization would favor either proposal No. 1—but with reduced shipping percentages—or, alternatively, the "reserve supply plant" provision proposed by NFO.

Both AMPI and NFO testified that present pooling standards have not permitted them to pool their member producer milk on the Iowa markets, even though such milk was produced in the same general area as the milk of other cooperatives on these markets. In particular, they testified that they had difficulty finding pooling outlets through which to pool milk of member producers located in Iowa. Earlier, in the discussion concerning the need for merger, the potential problems associated with the limited access to these markets were discussed.

In view of the record testimony and the marketing conditions in the Iowa area, it is concluded that supply plant pooling provisions similar to those proposed by Proponent No. 1 are most appropriate for the merged order. However, certain additional features should be included in such provisions to accommodate the pooling of additional Grade A milk that is available in the Iowa procurement area.

During the months of September through November, any supply plant, regardless of location, should qualify for pooling by shipping 35 percent of its Grade A receipts to pool distributing plants. During December through August, a supply plant should have to ship only 20 percent of its receipts. For those supply plants that are within the customary procurement area of the Iowa market, additional flexibility should be provided in meeting these standards. The procurement area, for this purpose, should include the States of Iowa, Minnesota, and Wisconsin, and that portion of Illinois north of Interstate 80.

In this area, untis of two or more supply plants operated by one or more cooperatives or by a single proprietary handler should be allowed to qualify as a single plant; producer milk that is delivered by a coopertaive directly from producers' farms to pool distributing plants should be considered as qualifying shipments from a supply plant or unit if so requested by the handler; and shipments to distributing plants that are fully regulated under other Federal orders should be considered as qualifying shipments under this order, except that credits for shipments to other Federal orders should not exceed shipments to pool distributing plants under this order.

The four separate orders now differ considerably in their supply plant pooling standards. Under the Quad Cities-Dubuque order, a supply plant has to ship 35 percent of its receipts to pool distributing plants. However, if it ships 50 percent of its receipts during the months of September through November, it would automatically qualify as a pool plant during the following months of December through August. In addition, a plant operated by a cooperative association would qualify as a pool plant if the total pounds of member producer milk received at pool plants of other handlers during the month, or during the 12-month period preceding the month, are more than the total pounds of Grade A milk received at its plant during the corresponding period.

Under the Cedar Rapids-Iowa City order, a supply plant operated by a proprietary handler has to ship 35 percent of its Grade A receipts to pool distributing plants to qualify as a pool plant. If it ships 50 percent of its receipts during the months of September through November, it would automatically qualify as a pool plant during the following months of March through June. A supply plant operated by a cooperative association may qualify for pooling if the association delivers milk (any amount) to pool distributing plants during the month.

Under the North Central Iowa order, a supply plant qualifies for pooling it if ships milk to pool distributing plants on not less than 10 days during the months of September through November and on not less than 5 days during other months.

Under the Des Moines order, a supply plant must ship 35 percent of its receipts to pool distributing plants during the months of September through March and 30 percent during April through August. However, if it ships 50 percent of its receipts during the months of September through November, it would automatically qualify for pooling during the following months of March through June.

A spokesman for Proponent No. 1, in explaining their proposal, testified that supply plant shipping requirements are necessary to identify those plants that are willing, able, and actively supplying the Class I needs of the market. Year-round shipping requirements, he said, assure that a potential supplier has both the ability to ship and has a customer.

The witness also stated that unit pooling, in combination with allowing direct shipments from producers' farms to pool distributing plants to count as qualifying shipments, would provide a maximum degree of flexibility in supplying the market. It would allow shipments to be made from those supply plants most favorably situated to the distributing plants needing the milk. It would give an organization with a variety of facilities and capabilities the opportunity to serve the requirements of the market in the most efficient manner.

The witness gave several examples of how the market could be better served with this provision. He said that supply plant operations are superior in terms of efficiency and quality to direct deliveries of milk from producers' farms. Because supply plants are generally located in the proximity of the farms where the milk is produced, he said, it is shorter to haul the milk to a supply plant than to a distributing plant. Therefore, less quality deterioration takes place before the milk is delivered. Once received in the plant, the milk is cooled to a temperature which inhibits further deterioration. It can then be shipped to a distributing plant at a lower temperature than milk shiped directly from producers' farms.

The witness said another advantage of supply plants is that full loads can be made up in supply plant shipments to distributing plants, whereas with milk shipped directly from the farm or through a reload, it is rare that a full

load can be made up. He said that supply plant milk, thus, results in fuel savings. Also, because the loads are full, the milk is agitated less and arrives with less quality deterioration.

A final advantage which the witness described is the "banking" of milk which is possible with supply plants. Direct-shipped milk that is not needed on a given day must be diverted to a nonpool plant, where it is no longer available for fluid use. However, milk delivered to a supply plant can be stored there until the following day and then delivered. Thus, a smaller amount of reserve milk is needed to supply the fluid needs of the market.

The witness also testified that certain provisions of the four Iowa orders have deterred the operation of supply plants, accounting for the small number (5) of supply plants now operating as pool plants. He said that the unit pooling provision, in conjunction with their proposal concerning location adjustment credits for supply plants, would allow a greater number of supply plants to be established, thereby providing greater service and efficiency to the market.

A spokesman for NFO testified that it has been unusually difficult to pool milk on the Iowa markets because other cooperative associations operate pool distributing plants which account for more than half of the total milk pooled under the four orders. When his organization has tried to supply direct-ship milk to certain distributing plants, he said, they have been refused because such shipments would have displaced shipments from the handler's own supply plants, even though the direct-shipped milk was cheaper than the milk brought in through such supply plants. The NFO spokesman said the pooling standards proposed by Proponent No. 1—in particular, the year-round shipping requirement—would continue to discourage the purchase of direct-shipped milk from NFO.

The witness also stated that more equitable, broader-based pooling standards are needed in Iowa to accommodate the pooling of all of the Grade A milk available and to avoid disorderly marketing conditions in the future.

A spokesman for AMPI testified that significant volumes of milk produced in the State of Iowa are being pooled outside the four Iowa markets. AMPI, he said, has pooled such milk in many other markets, sometimes because of a better return on such other markets, and sometimes because they were unable to pool the milk under the Iowa markets.

The witness also testified that the pooling standards proposed by Proponent No. 1 (of which it is a part, but not on this issue) would provide no better access to the merged order than has been available under the four separate orders. For this reason, AMPI proposes either reducing the shipping requirements or adopting the reserve supply plant provision that is in the Upper Midwest order. The witness specifically suggested a shipping requirement of 25 percent year-round or 40 percent in the fall months and 15 percent during the other months of the year.

The president of Anderson-Erickson Dairy, Des Moines, Iowa, also offered testimony on supply plant pooling standards. He stated that he favors year-round shipping requirements as contained in proposal No. 1, but opposes the unit pooling aspect of the proposal because it discriminates against a proprietary handler.

The Iowa market, unlike the Upper Midwest market, is not a uniformly heavy milk producing area. Seventy-nine percent of the milk pooled under the four Iowa orders in 1975 was produced in Iowa, 17 percent was produced in Minnesota, 3 percent was produced in Wisconsin, and about 1 percent was produced in Illinois. Of the 79 percent produced in Iowa, 47 percent was produced in the 11 counties that comprise the northeastern district. Of the 17 percent produced in Minnesota, 13 percent was produced in the 9 counties comprising the southeastern district (directly north of the northeastern district in Iowa).

While most of the milk produced in Iowa comes from the northeastern corner of the State, most of the fluid milk products are consumed in the major population centers outside of this area. For example, Polk County, which encompasses Des Moines, had an estimated population of 294,000 in 1973, which made it the most populated county in the State. Des Moines is 108 miles from the closet part of the northeastern district of Iowa.

Similarly, Cedar Rapids, Iowa City, and the Quad Cities are also outside this heavy milk producing area. Accordingly, milk must be imported into these heavily populated areas on a year-round basis.

Iowa handlers compete with other order handlers for milk supplies. The supply area for the Iowa market is also part of the supply area for more southerly deficit production areas such as the Central Illinois, Southern Illinois, and St. Louis-Ozarks Federal order markets. These markets and the Iowa market also obtain milk supplies from the more northerly heavy milk production area in Minnesota and Wisconsin encompassed by the Upper Midwest Federal order marketing area.

These neighboring Federal order market pools represent alternative outlets for milk produced in the Iowa market production area. Consequently, the Iowa order uniform price should be maintained at a competitive level with other order uniform prices in the supply area in order for the Iowa handlers to obtain adequate supplies. Moreover, to effect orderly marketing among orders, the Iowa order uniform price should be maintained in close relationship to alternative market uniform prices in common procurement areas.

Pooling standards can aid in accomplishing the appropriate alignment of intermarket uniform prices. Should pooling standards be set too low, it would be possible for pool handlers to attach excessive milk supplies with the market for manufacturing use and thereby reduce the uniform price below the competitive level, while other handlers in the pool are in need of additional milk for Class I use. On the other hand, if pooling standards are set too high, the order would tend to deny access of milk to the pool in the event the uniform price is sufficiently above alternative market uniform prices to attract additional milk supplies. This would disrupt orderly marketing among orders.

The institutional structure of the Iowa market and neighboring markets presents the risk of a handler attaching an excessive amount of milk to the Iowa pool for manufacturing use. The larger cooperative associations that operate pool plants and whose member producers supply milk to the Iowa market also have a large number of member producers in the Iowa supply area whose milk is marketed under neighboring orders. Such milk supplies could be shifted readily to the Iowa pool by the cooperatives.

The Order 63 (Quad Cities-Dubuque) and Order 79 (Des Moines) uniform prices were generally in close alignment with alternative market uniform prices in common supply areas during 1975. But the Order 70 uniform price and the Order 78 weighted average uniform price have tended to be somewhat higher than other uniform prices in the Iowa supply area. Consequently, at the outset of the merger of the orders, it can be expected that the uniform price under the Iowa order will be slightly higher than other order uniform prices in the supply area. This will tend to attract additional milk to the pool and thus reduce the uniform price to where it is comparable to alternative market uniform prices.

In 1975, the combined Class 1 utilization of the Iowa orders averaged about 54 percent, or 4 percent higher than the Class I utilization under the Des Moines order and 8 percent higher than the 46 percent Class I utilization under the Quad Cities order. Under the combined Iowa order, producer receipts averaged 107 million pounds and Class I disposition averaged 58 million pounds per month in 1975. To reduce the combined market Class I utilization percentage to the Des Moines order level, 8 million pounds of milk per month would need to be added to the pool. It would have taken an increase of 18 million pounds of producer milk receipts monthly to reduce the Iowa Class I utilization to the 46 percent that prevailed under the Quad Cities-Dubuque order. Thus, it can be expected that under the merged order the uniform price will attract some 10 to 15 million pounds of milk to be shifted from other order pools to the Iowa order pool.

It is not uncommon for a single supply plant to have monthly receipts of 10 to 15 million pounds of milk. Accordingly, no major reduction need be made in the level of supply plant shipping percentages to accommodate pooling the milk supplies that should be accommodated in the Iowa pool. In fact, the pooling standards should require pool milk to be continuously associated with the fluid use outlets as a basis of pooling. Otherwise, excessive supplies of milk could be tied up for manufacturing use at Iowa locations when it is needed for fluid use in

Iowa or in the more southerly deficit markets. This would tend to force shipment of milk from the more northerly reserve milk supply areas of Minnesota and Wisconsin for bottling use which would entail greater transportation costs.

Additionally, pooling standards that require continuous association with distributing plant outlets need to be maintained so that the reserve milk supplies in the production area that are pooled on more southerly markets will not be shifted to the Iowa pool during the flush production season. Any such shift of milk supplies seasonally could be accomplished rather easily by handlers who operate pool plants in both markets. Moreover, the seasonal incentive payment plans in the Central Illinois, Southern Illinois, and St. Louis-Ozarks Federal order markets result in seasonal uniform price differences that would encourage such shifts of milk to the Iowa pool in the absence of shipping requirements.

In light of the abovementioned circumstances prevailing in this market, the supply plant shipping standards adopted herein are most appropriate for the merged order.

Unit pooling will permit the economic movement of milk to the market. Savings to the pool can result from reducing shipments of milk to pool distributing plants from distant supply plants solely for the purpose of qualifying such plants when closer milk is available, either on a direct-ship basis or from a closer plant.

Unit pooling will permit a cooperative or proprietary handler to direct milk shipments from supply plants according to the most efficient use of the milk at all plants in the system. In the event some phase of the milk manufacturing operation were to become more profitable than another, adjustments could be made in supply arrangements so that reserve milk could be manufactured at certain plants, while other plants supply the market with milk for fluid use.

In order to form a unit, a handler (or group of cooperatives) must notify the market administrator in writing prior to the first day in September that he (they) is requesting that two or more of his (their) plants be considered a unit for the subsequent months of September through August. In such request, the handler shall list the plants in the sequence in which they will qualify for pooling based on the deliveries made. In the event that insufficient deliveries are made to qualify the entire unit, the plant(s) last on the list will be disqualified from pooling and removed from the unit.

Once a unit is formed, no plants may be added to it in subsequent months. A plant may be removed from a unit or the unit may be discontinued if the handler notifies the market administrator of such intent prior to the first day of the month that the action is to be effective. Such actions shall then be permanent until the following September, when units may be formed anew.

Since the prospective date on which the new order will become effective is several months away from the next unit-forming period, units should be allowed to form as of the effective date of the Iowa order. Such units may then continue in effect until the next qualifying period in September 1977. Parties seeking to form a unit should notify the market administrator of such intent prior to the effective date of the new order.

Cooperatives and proprietary handlers should be allowed to meet supply plant shipping requirements on the basis of direct deliveries from producers' farms. Much of the milk produced for the Iowa market can and should be delivered on a direct-delivery basis. Although one witness explained that supply plant milk is of better quality and is more efficient to supply, the operator of the largest distributing plant in the market testified that he preferred to purchase milk on a direct-ship basis.

Under certain circumstances, both of these points of view probably have merit. What is of primary importance, however, is that handlers and cooperatives have the opportunity to market milk in the most efficient way possible. Testimony indicates that current order provisions have not always permitted this. Inclusion of direct deliveries as qualifying shipments will remove the necessity of supplying milk through a supply plant—simply to keep the plant qualified for pooling—when the milk can be more economically supplied directly from producers' farms.

A supply plant or unit should be given credit for its shipments to distributing plants regulated under other orders. Such credit, however, should be limited to the amount of milk supplied by the plant or unit to pool distributing plants under the Iowa order. This provision will help accommodate the orderly pooling of Grade A milk that is produced in the Iowa market procurement area, even though local fluid outlets might not require all of the milk that is available.

Frequently, cooperatives have the opportunity of supplying milk to distributing plants regulated under different orders, but are reluctant to do so because of the necessity of supplying a minimum quantity of milk to distributing plants under just one order. For example, if the shipping requirements for each of three hypothetical orders were 50 percent, and a supply plant supplied 25 percent of its milk to one order, 19 percent to another order, and 10 percent to the remaining order, it would not qualify for pooling under any of them. Even though these other orders would provide the most lucrative outlet for this cooperative's milk, the cooperative would be unable to supply these other markets because of the necessity of qualifying its plant for pooling.

If a supply plant is given credit for its shipments to other markets, it will be encouraged to offer "spot" shipments of milk where needed. This will not only help the cooperative maximize its returns, it will also help the handler in the buying market to obtain milk from the closest available source.

Credit for shipments to other markets should be limited to the amount of milk delivered to distributing plants regulated under this market to insure that adequate supplies of milk will be made available to distributing plants in this market. If no limit were provided on credit for shipments to other markets, situations could arise where most of the milk in Iowa would be moved to other markets. In such a case, it would undermine the effectiveness of the Iowa order in insuring an adequate supply of milk for fluid use within the market.

The provisions discussed above, i.e., unit pooling, direct-delivery credits, and other order credits, should be limited to plants within the procurement area because they allow a plant to pool without any actual shipments from that plant. Consequently, a plant operated by an Iowa handler in a distant, higher-priced market could conceivably qualify for pooling on the Iowa market based on direct deliveries or the performance of a local plant if it were included in a unit. This could result in serious price misalignment between similarly located plants that are regulated under different orders. Therefore, the pooling options mentioned above should be confined to plants located in lower-priced areas, i.e., Iowa, Minnesota, Wisconsin, and northern Illinois.

All proponents proposed a provision that would allow a plant to qualify as a pool plant in the current month if it met the pool performance standards in the immediately preceding three months. This provision should be adopted for the merged order. However, it should not apply to plants qualifying as part of a unit.

Allowing a plant that failed to meet the pooling standards for the month to be a pool plant if it met the requirements in each of the three preceding months is a reasonable and equitable basis for protecting producers' interests. It will afford handlers the opportunity to make corrective adjustments in their operations in the event of unanticipated circumstances or a miscalculation, and it will afford producers reasonable opportunity to find an alternative pool outlet for their milk without losing pooling privileges in the interim.

It is not necessary to extend the one-month automatic pooling privilege to plants that are included in a unit since such plants already have the security of being in a unit. Thus, failure to perform does not mean such a plant will lose its pool status so long as the unit as a whole performs.

Nonpool plant. The "nonpool plant" definition of the merged order should specify those categories of plants other than pool plants. The four Iowa orders now have identical "nonpool plant" definitions.

A spokesman for Proponent #1 proposed that a governmental agency plant also be included in the nonpool plant definition. This suggestion should be adopted. A governmental agency plant should be defined as a plant operated by a governmental agency from which fluid

milk products are distributed in the marketing area.

Presently, there are no known governmental agency plants located in or near the Iowa marketing area. However, in the event that a state university, state prison, or some other governmental institution establishes a plant in the future, provision should be made for its exclusion from regulation under the order.

Governmental agency plants are generally operated in the public interest to carry out a recognized function of the State. These operations are not in the nature of operations of proprietary handlers whose regulation is necessary to effectuate the intent of the Act.

A governmental agency plant which operates its own farms may at time have production in excess of its usual requirements. In light of the exempt status here provided, whereby producers generally do not share in the Class I utilization of such operations, it would be inappropriate to permit such institutions to share in the proceeds from the sales of pool milk. Accordingly, the order should provide that milk received at pool plants from such operations be allocated to Class III. Any such milk allocated to Class I at a pool plant would be subject to a compensatory payment at the difference between the Class I and Class III prices. This is identical to the treatment accorded producer-handlers with respect to any sale of milk to pool plants.

A governmental agency plant may at times find it necessary to purchase supplemental supplies from regulated handlers under the merged order. It may reasonably be expected that purchases in the form of fluid milk products would be made and used for Class I purposes. The order should provide, therefore, that fluid milk products transferred or diverted from pool plants to governmental agency plants be classified as Class I.

Handler. The impact of regulation under an order is primarily on handlers. The handler definition identifies persons who will have responsibility for filing reports and making payments for milk under the merged order.

Accordingly, the order should designate handler status for the following persons:

(1) The operator of a pool plant;

(2) A cooperative association with respect to milk that is diverted for its account;

(3) A cooperative association with respect to bulk tank milk picked up at the farm for delivery to a pool plant under specified circumstances;

(4) The operator of a partially regulated distributing plant;

(5) A producer-handler;

(6) The operator of an other order plant from which milk is disposed of in the market; and

(7) The operator of an unregulated supply plant.

Presently, the Des Moines order defines all of these categories of handlers. The Quad Cities-Dubuque order does not include a cooperative association as a handler on bulk tank milk. The Cedar Rapids-Iowa City order does not define the operator of an unregulated supply plant as a handler. The North Central Iowa order does not define as a handler a cooperative association with respect to milk diverted for its account, the operator of a partially regulated distributing plant, a producer-handler, the operator of an other order plant from which milk is disposed of in the marketing area, or the operator of an unregulated supply plant.

All parties that may have an obligation under the order should be included in the handler definition. This will assure that all information necessary to determine their status under the order can be readily obtained.

The definition for a cooperative association acting as a handler on bulk tank milk proposed for the merged order by Proponent #1 should not be adopted. Such proposal would give a cooperative the option of not being the handler on bulk tank milk under its control. The present cooperative bulk tank handler definition under the Des Moines order should be retained for the new order. It requires a cooperative to be the handler on bulk tank milk under its control, unless the buying handler agrees to buy such milk on the basis of weights and tests determined from measurement at the farm.

Supporters of proposal No. 1 testified in opposition to the bulk tank handler provision in the Des Moines order. Such provision states that "unless both the cooperative association and the operator of the pool plant notify the market administrator that the plant operator will be responsible for payment for the milk and is purchasing the milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples", the cooperative association will be the handler on such milk.

A spokesman stated that this provision places a cooperative in a difficult position because it must absorb the shrinkage (or loss) between farm weights and tests and tanker weights and tests. He argued that this difference is a part of raw ingredient cost and should be passed on up the marketing chain, ultimately reaching the consumer level.

Two handlers testified in opposition to the proposed definition. One handler testified that the proposed definition works to the detriment of the handler, who has no power to enforce weighing and testing procedures because the hauler who transports the milk from the farm to his plant is under the control of the producers and cooperative associations. Consequently, he stated, the handler must absorb losses over which he has no control. Another handler supported the current provision of the Des Moines order, testifying that a handler should only pay for that milk actually received at his plant.

A cooperative should be a handler with respect to any such milk which it receives for its account from the farm of a producer for delivery to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative. However, if there is a mutual arrangement between the cooperative and the plant operator, noticed to the market administrator, whereby the plant operator agrees to purchase such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, either the cooperative or the pool plant operator may be the reporting handler for such milk, according to the agreement reached between them.

When the milk of any producer is commingled in a tank truck with that of other producers, the identity of the individual producer's milk is lost. The amount of the producer's milk in the truck and the butterfat content thereof can be determined only from measurement of the milk at the farm and from milk samples taken from the farm tank. After the milk has been pumped from the individual producer's farm tank into the tank truck of the hauler and commingled with the milk of other producers, there is no opportunity to measure, sample, or reject the milk of an individual producer.

Much of the milk received at pool plants in the proposed marketing area is picked up at the farm in trucks owned or operated by, or under the control of, cooperative associations. In this case, it is only the association that has the opportunity to measure and sample the milk of individual producers that is received at the pool plant. In the absence of any agreement by the plant operator to be the handler for the milk, the association necessarily must be the responsible handler for the milk as it leaves the farm.

When a cooperative is the handler for farm bulk tank milk, certain accounting and payment procedures should apply under the merged order with respect to such milk. As provided in the attached order, the milk would be considered as a receipt of producer milk by the cooperative at the location of the pool plant to which the milk is delivered. The purchase of such milk by the pool plant operator would be treated as an interhandler transfer but would be classified pro rata with producer milk that the pool plant operator may receive. The pool plant operator would be obligated to the producer-settlement fund for the milk received directly from producers and by transfer from bulk tank cooperative handlers at its classified use value. The cooperative in turn would be reimbursed by the handler at the blended price. Milk which the cooperative has picked up from the farm bulk tank and which has not been delivered to a plant during the month will be accounted for by the cooperative as ending inventory and the cooperative will be paid the blended price applicable at the location of the plant of physical receipt in the following month. In the following month, the cooperative's pool obligation will be adjusted to reflect the value of such inventory at the Class III price for the previous month.

The adopted accounting and payment procedure will facilitate administration of the order with respect to matters of financial responsibility and audit adjustments. It is the pool plant operator who processes the milk and distributes it to

consumers. It is reasonable, then, that the responsibility for accounting for the utilization of such milk and for its payment be placed directly on the plant operator. Were settlement with the pool to be made by the cooperative association, i.e., should the plant operator settle with the cooperative at class prices and the cooperative pay to the producer-settlement fund, an unnecessary third party is involved in the transaction. Also, the adopted procedure will facilitate the handling of audit adjustments that might result from the verification of a plant's utilization of milk. An error in the reported classification of milk at the pool plant, for example, would not require a related adjustment in the cooperative's classification of milk and, thus, its obligation to the pool for such milk.

A pool plant operator receiving farm bulk tank milk from a cooperative also should be responsible for paying to the market administrator the administrative assessment on such milk. The audit and verification activities of the market administrator relate essentially to the operations of the pool plant where the milk is processed. Accordingly, the plant operator should pay his pro rata share of the administrative costs on milk received from the cooperative in its capacity as a bulk tank handler, just as he does on milk received directly from producers.

When the cooperative is the responsible handler on farm bulk tank milk, the pool plant operator may buy such milk on the basis of weights and butterfat tests determined at the plant rather than on the basis of those determined at the farm. Usually, the quantity of milk picked up at the farm slightly exceeds the quantity ascertained as actually received at the plant. In such cases, the difference should be considered as a receipt of producer milk by the cooperative association at the location of the pool plant where the milk in the tank truck was delivered. The cooperative should be obligated to settle with the producer-settlement fund and to pay the administrative assessment on the milk involved.

The pool plant operator should be permitted under the merged order to be the responsible handler on bulk tank milk moved by the cooperative from the farm to the plant if both the cooperative and the pool plant operator notify the market administrator that they have agreed to such a handler arrangement and that the plant operator agrees to purchase the milk on the basis of weights and tests determined at the farm. Under this arrangement, the pool plant operator may agree to be responsible for the milk in the same manner as for producer milk that he receives at his plant directly from the farm. This could include being responsible for submitting to the market administrator monthly reports showing for each producer the farm weights and tests of milk received at his plant. It should be noted, however, that when the pool plant operator purchases milk from the cooperative on the basis of farm weights and tests, he need not be the reporting handler for such milk.

A cooperative association also should be a handler with respect to the milk of a producer which is diverted for the account of the association from a pool plant of another handler to a nonpool plant that is not a producer-handler plant. Three of the four orders proposed to be merged provide that a cooperative may act as a handler for diverted milk. Continuation of this handling arrangement will facilitate the movement of milk not needed for fluid use to nonpool plants for manufacturing.

The merged order should afford all cooperatives in the market flexibility in the arrangements under which they sell milk to pool plants or dispose of reserve supplies. If it so chooses, a cooperative should be able to pick up the milk of nonmember producers along with the milk of its members for delivery to a pool plant or for diversion to nonpool plants. This procedure will enable the cooperative to act as the marketing agent for a nonmember producer who, although he has not become a member of the cooperative, has contracted with the cooperative to act as the marketing agent for his milk. Nothing in the order would require a cooperative to pick up the milk of nonmember producers. It would provide, however, that, when a cooperative does pick up milk of nonmember producers on trucks under its control, it must assume varying degrees of responsibility with respect to such milk, depending on the handling arrangements made.

The Capper-Volstead Act provides the criteria by which cooperative associations are determined to be qualified cooperatives under the Agricultural Marketing Agreement Act. With the adopted handler definition, the merged order would be consistent with that provision of the Capper-Volstead Act which recognizes that cooperatives may "deal in the products of nonmembers" and which limits such dealings to amounts not greater in value than as are "handled by it for members."

In the event a cooperative does market the milk of a producer who is not a member of the association, a question arises about the appropriate method of paying such producer. If the nonmember producer has signed a contract with the cooperative whereby he authorizes the cooperative to market his milk and collect payments therefor, the cooperative may pay the nonmember in accordance with the contract. If such marketing functions occur in the absence of a written contract, the cooperative would be required to pay the nonmember producer not less than the prices prescribed by the order.

Producer-handler. The merged order should continue the exemption now contained in each of the four individual orders of a "producer-handler" from the pooling and pricing provisions of the order.

Experience under the separate orders has demonstrated that effective regulation can be insured without the full regulation of individuals who process and distribute milk produced on their own farm and who buy no milk from other dairy farmers. Such operations are basically self-sufficient in that they rely primarily on their own farm production and assume the burden of maintaining the necessary reserve supply of milk associated with their fluid milk operation and of disposing of any daily or seasonal surpluses they may produce.

As adopted herein, a "producer-handler" would be any person who operates a dairy farm and a processing plant and who receives no fluid milk products from sources other than his own farm production, pool plants of other handlers, and other order plants. He could use no nonfluid milk products for reconstituting fluid milk products. To qualify as a producer-handler, such person would have to provide proof satisfactory to the market administrator that the care and management of the dairy farm and other resources necessary for his own farm production of milk and the management and operation of the processing plant are the personal enterprise and risk of such person.

The producer-handler definition adopted herein is almost identical to the one proposed and supported by merger proponents. It forbids the receipt of nonfluid milk products for use in reconstituting fluid milk products, but such receipts are allowed for use in fortifying fluid milk products. Also, receipts of fluid milk products during the month from fully regulated plants are limited to 50,000 pounds.

Producer-handler definitions under most orders limit such purchases of supplemental milk supplies and require that such supplies only come from pool plants or other order plants. Since producer-handlers are expected to be self-sufficient in their operation, only occasionally should they require a supplemental supply of milk.

Although this 50,000 pound limit is somewhat arbitrary, it was proposed and supported by all merger proponents and represents a realistic, but not excessive, limit on the purchase of supplemental milk supplies by a producer-handler.

There are two known producer-handlers operating in the merged Iowa marketing area. What testimony there is on the record relative to producer-handlers indicates that neither of these handlers purchases supplemental milk supplies from any source. Therefore, the 50,000 pound limitation on the purchase of supplemental supplies will not cause these handlers to lose their exemption under the order.

Under the merged order, producer-handler status would be contingent upon such person substantiating to the satisfaction of the market administrator that the operation of the dairy farm and processing plant in question is at his sole risk. As indicated, a producer-handler's exemption from the pooling and pricing provisions is predicated on the premise of self-sufficiency of the total operation. Accordingly, no other person should be permitted to share the risk involved with the operation of a producer-handler's farm or his plant. All resources necessary for his own farm production of milk and for the operation of the processing plant must be his personal risk.

The risk concept need not extend to the actual distribution on routes of the milk processed by the producer-handler. Experience with the producer-handler provision indicates it is unnecessary to require a producer-handler to have sole responsibility for his route distribution. It must be understood, however, that the restrictions applicable to a producer-handler regarding milk supplies from sources other than his own farm are equally applicable to any distribution facility (including routes) operated by him, an affiliate, or by any person who controls or is controlled by him. Any receipts of milk from other than his own farm that are disposed of through such a facility or on such routes will be included as though a receipt at his plant for the purpose of determining his status as a producer-handler.

Producer. The term "producer" defines those dairy farmers who constitute the regular source of supply for the market. The producer definition proposed herein follows closely the one proposed and supported by each of the merger proponents. It is virtually identical to the producer definitions in each of the four separate orders.

Producer status under the merged order should be provided for any dairy farmer who produces milk approved by a duly constituted regulatory agency for disposition as Grade A milk and whose milk is received at a pool plant directly from the dairy farmer or received by a cooperative association as a handler for farm bulk tank milk for delivery to a pool plant. Producer status also should be accorded such a dairy farmer who has an established association with the market and whose milk is diverted to nonpool plants for surplus disposal. To determine a producer's association with the market and to insure the marketability of his milk in Grade A channels, it is reasonable to require that a dairy farmer's milk be received at a pool plant at least once each month in order to be eligible for diversion to a nonpool plant.

A producer-handler, who would have exempt status under the order, is excepted from the producer definition. In addition, provision must be made to preclude the possibility of a dairy farmer being a producer under two orders with respect to the same milk. In this regard, the producer definition should continue the provisions of the present orders that exclude (1) a person with respect to milk which is received at a pool plant regulated under this order as diverted milk from a pool plant under another order if the dairy farmer whose milk is involved is a producer under the other order with respect to such milk and it is allocated to Class II or Class III use under this order, and (2) a person with respect to milk which is diverted to another order plant from a pool plant regulated under this order if assigned to Class I milk under the other order.

Producer milk. The "producer milk" definition is intended to define that milk to be priced and pooled under the merged order. The definition adopted herein contains the basic features in the proposals by the merger proponents.

As provided herein, producer milk would include milk received directly from a producer at a pool plant by the plant operator, milk picked up at a producer's farm during the month in a tank truck under the control of a handler that is received at a plant in the following month, and milk of a producer that is received by a cooperative association as a bulk tank handler for delivery to a pool plant. Producer milk also would include milk of producers that is diverted under specified conditions.

Producer milk should include milk picked up at a producer's farm during the month in a tank truck owned and operated by, or under the control of, a pool handler but which is not received at a plant until the following month. Such milk should be considered as having been received by the handler in the month it is picked up at the producer's farm and should be priced at the location of the plant where the milk is physically received in the following month.

Under the present accounting procedure in the respective orders, milk which is picked up at the farm in the current month, but which is not physically received at a plant until the following month, is treated as a receipt of producer milk in such following month. This procedure has presented substantial accounting problems, particularly when milk passes through a reload facility. In such instance, a portion of the pick-up tanker's load may be transferred to an over-the-road tanker and delivered during the month, while the remainder of the load may be held at the reload facility. While administrative guidelines have been adopted to insure uniform accounting procedures for such milk throughout much of the Federal order system, the procedures have not fully resolved the accounting problems to the satisfaction of affected parties. Further, individual producers have not understood the deferred settlement which results when milk picked up in the current month is not physically received at a plant during the month.

Dairy farmers need not be required to wait one and a half months before receiving the uniform price for milk that is picked up at their farms on the last day of a month but is not received at a plant until the following month. The accounting procedure will be simplified and should be more readily accepted if milk is pooled in all cases in the month in which it is picked up at the farm. Milk not physically received at a plant in the current month will be included in the responsible handler's end-of-the-month inventory and will be priced at the location of the plant where the milk is physically received in the following month. Since this milk normally will be received at a plant on the first day of the following month, the handler will know the location of the plant of actual receipt in time to include this information in his monthly report, which he is required to file by the 8th day of the following month. If, however, none of the milk loaded into a pickup tanker is received at a plant, such milk will not be included in the responsible handler's report and he will have no pool obligation on it. This conforms with the present provisions, which tie the producer milk provisions to receipt of such milk at a plant.

If the operator of a pool plant is the responsible handler, he will account for the producer milk which has not arrived at his plant by the end of the month as part of his end-of-the-month inventory and will be charged the Class III price in the month it is picked up at the farm. In the following month, this milk will be treated in the same manner as other fluid milk products he had in inventory.

If a cooperative association bulk tank handler is the responsible handler, such cooperative will account for the milk in transit as inventory at the Class III price and will be credited at the blend price. Additional conforming changes are needed to implement this procedure to insure that in the following month the cooperative is credited for its pool obligation in the preceding month on such milk. In such following month, this milk is included in the obligation of the pool plant handler who physically received it and he will account to the market administrator for this milk at the classified prices. Such monies would be deposited in the producer-settlement fund, but since the milk was pooled in the preceding month, it would not be included in the pool computation of the current month.

NFO proposed that diversion limitations be set at the combined Class II and III utilization percentage for the same month of the preceding year. Proponent No. 1 proposed that diversion limits be set at 50 percent during the months of September through January and 70 percent in other months.

The diversion limits adopted herein are 50 percent during the months of September through November and 70 percent in all other months. Although the Class I utilization can be expected to vary from year to year, in the most recent year the highest utilization occurred during the months of September through November. Accordingly, diversion limits should be lowest during those months since less milk is produced in excess of fluid needs at this time of year. Moreover, these months best fit in with the pooling standards proposed. As discussed earlier, the months of high performance should also be the months of lower diversions. The months of September through November are those adopted for the highest pooling performance and, therefore, should also be used for the lowest diversion limitation.

Since the market's Class I utilization may vary from 50 percent in the fall months to 30 percent in the flush production months, the 50 and 70 percent limits adopted are well coordinated with the expected Class II and III utilization.

The proposal by NFO to use the combined Class II and III utilization for the same month of the preceding year should not be adopted for the same reasons ex-

plained above with regard to pooling standards: namely, that the Iowa market is not expected to have the same stability in utilization as the larger Upper Midwest market. Therefore, the combined Class II and III utilization of a year ago may not be a good reflection of this year's supply-demand situation. While the same criticism would apply to the fixed percentages adopted here, we believe they are liberal enough to preclude any problems for the foreseeable future.

The diversion limits adopted are applied as a percent of a handler's total producer milk. Thus, individual producers may be diverted on an unlimited basis, except for the requirement that their milk be received at a pool plant at least once each month. Under these circumstances, it is unlikely that a handler would have any difficulty disposing of his surplus milk on a diversion basis.

The merged order should permit the proprietary operator of a pool plant to divert milk to any other pool plant for his (the diverting handler's) account. Such treatment is necessary to assure proprietary handlers the same privileges accorded cooperative associations, who, as previously mentioned, operate pool plants in the four markets in direct competition with proprietary handlers.

Diversions between pool plants need not be allowed in the case of a plant operated by a cooperative association, since provision is already provided in the order for the cooperative to be a handler on milk shipped directly from producers' farms to pool plants of other handlers. Further latitude in the handling of milk by a cooperative association is not needed.

The merged order should, in so far as possible, promote the most efficient handling of milk. To this end, the proprietary operator of a pool plant should be permitted to divert milk supplies to another pool plant and retain the producer milk status and payroll responsibility for such milk. Without such a provision, a handler wishing to retain his regular producers on his payroll for the entire month would have to physically receive the milk of such producers into his plant (so that it will be considered "producer milk" there), then pump it back into the truck, and deliver it to the other pool plant. Such milk would then be considered a transfer from one plant to another with the transferor handler accounting to the pool for the milk,and paying those producers as well.

This practice is obviously uneconomic, resulting in unnecessary and costly movements of milk. In addition, the unnecessary pumping of milk is damaging to its quality. Permitting diversions of milk between proprietary pool plants will promote efficient handling of milk and also will facilitate more simplified accounting procedures on producer milk weights, butterfat testing, and payrolling.

A cooperative association spokesman testified to the desirability of recognizing the transfer of milk through a pipeline connecting a pool plant to an adjoining or adjacent facility which is not approved for the handling of Grade A milk, in lieu of transfer in a tank truck. The witness stated that recognition of pipeline transfers would promote efficient handling of milk and facilitate the use of storage capacity in the Grade A part of any such plant or complex.

It is essential to the proper operation of the order that movements of milk between plants be fully and accurately reported to the market administrator and that reported movements be readily verifiable. Transfers of milk through a pipeline may not always be readily verifiable. Thus, the flexibility to be accorded handlers with respect to the manner of movement of milk is an administrative matter that may be left to the discretion of the market administrator.

As proposed by the merger proponents, all diverted milk for pricing purposes is treated as a receipt by the diverting handler at the location of the plant to which the milk was diverted. This treatment is presently applicable under two of the four separate orders and must be retained. The Act specifically provides for the pricing of milk "at the location at which delivery * * * is made."

(b) *Classification of milk.* The uniform classification plan that became effective on August 1, 1974 (as amended August 1, 1975), for each of the orders under consideration should be continued under the merged order.

All of the proponent cooperative associations supported the continuation of the current classification plan, which was developed on the basis of very extensive hearings that had been held on this issue relative to 39 orders. However, Prairie Farms Dairy, Inc., proposed certain modifications of the plan.

Prairie Farms proposed including certain language that would have the effect of classifying certain products in the handler's distribution system, such as packaged fluid milk products, as end-of-month inventory even though such products had left the handler's plant. A spokesman testified that such changes would complement their proposed definition of route disposition.

As previously discussed, the route disposition definition adopted herein would include fluid milk products held at a distribution point (except a distribution point on the plant premises) of a handler at the end of the month. Such products, accordingly, would receive a Class I classification.

Prairie Farms also proposed that fluid milk products disposed of for animal feed receive a Class III classification "at any point of the handler's distribution system if adequate records are maintained." A spokesman testified that under some orders the market administrator requires that unsaleable products must be returned to the distributing plant to receive a Class III classification.

To preserve the integrity of the order, disposition of fluid milk products in other than Class I use must be verifiable by the market administrator's office. For verification purposes, it may be necessary that route returns or unsaleable products be brought back to the handler's plant for reclassification in Class III. The precise manner of handling such products should be left to the discretion of the market administrator, who has the overall responsibility of administering the order.

Shrinkage. Shrinkage provisions for the merged order should be patterned after those presently in the Des Moines order, except for conforming modification to accommodate diversions between pool plants.

All of the proponents, except Prairie Farms, proposed the basic shrinkage provisions now in most Federal orders, including the four Iowa orders. These provisions provide a Class III shrinkage limit for fluid milk products lost either enroute from farm to plant or in plant processing. Excess shrinkage is classified as Class I use.

Essentially, a handler is given a 0.5 percent Class III shrinkage limit for milk transported from producers' farms to his plant and a 1.5 percent Class III shrinkage limit for fluid milk products processed at the plant. If a cooperative is the handler on milk delivered from producers' farms, then the pool plant operator gets only a 1.5 percent shrinkage limit and the cooperative gets the other 0.5 percent. The Class III shrinkage limit is also adjusted to reflect bulk transfers or diversions to other plants and bulk receipts from other plants. No shrinkage limit is provided on certain categories of other source milk.

Prairie Farms proposed that all shrinkage experienced by a handler be classified as Class I milk and that the handler receive a fixed money credit based on his total receipts. The money credit would be computed by multiplying the Class I differential by a factor of 0.02, 0.015, or 0.005 (to conform with the present division of shrinkage as between milk assembly and processing functions), and the resulting product would then be multiplied by the hundredweight of milk received.

If a handler experienced the maximum shrinkage limit, there would be no difference in the impact of the present and proposed treatment of shrinkage of producer milk (for the handlers not using other source milk). However, if a handler experienced less than the maximum Class III shrinkage now allowed, he would still get, under the proposal, the fixed maximum credit allowance rather than a Class III classification of shrinkage based only on the actual shrinkage as under the present provisions. Accordingly, handlers could gain from the proposed provision to the extent that they receive an allowance for shrinkage which they did not incur. However, the proposed provisions would establish a shrinkage limit on other source milk, such as other order milk and unregulated supply plant milk for which Class II and Class III classification is requested. This could impose a greater obligation on handlers than presently.

Proponent contended that the proposed shrinkage provision would encourage a handler to better account for all milk product disposition. This would seem to be the case only with respect to use of other source milk on which no shrinkage

limit is now provided under the orders. The proposed provision would encourage handlers to better account for receipts of other source milk since any amount of disappearance of such milk in excess of 2 percent would be priced as Class I milk compared to Class III under the present provisions. With respect to receipts of producer milk, it appears there would be no greater incentive than now to fully account for disposition of fluid milk products that would be a Class I use, but there would be a greater incentive to account for disposition in Class II or III use in the case of a handler with less than 2 percent of his milk unaccounted for because whatever was unaccounted for would be priced as Class I and thereby increase his pool obligation. For a handler with 2 percent or more shrinkage, there would be no change in the incentive for a handler to better account for packaged fluid milk product disposition, as in either case unaccoumted for milk would be priced as Class I.

Proponent also proposed that shrinkage be accounted for on a product pounds basis as opposed to the present skim milk and butterfat basis. This would be workable so long as handlers experienced only shrinkage of milk receipts, since the price difference between a hundredweight of Class I and Class III skim milk is the same as the price difference between a hundredweight of Class I and Class III butterfat. Therefore, it makes no difference whether the shrinkage is accounted for on a skim milk and butterfat basis or on a product pound basis. In actual practice, however, handlers sometimes experience overages (i.e., have greater disposition of skim milk or buttterfat than reported receipts) which are offset by any shrinkage in the plant. Since a hundredweight of butterfat has a far higher value than a hundredweight of skim milk, it would not be appropriate to offset an overage of butterfat with a shrinkage of skim milk, which could result from not accounting for disappearance of milk on both a skim milk and butterfat basis.

Adoption of the proposed shrinkage provisions could result in a handler being charged the Class I price on shrinkage of other source milk that he accepted for allocation to Class II or Class III use and also could result in a handler not making full payment for an overage of butterfat. Therefore, the proposal should be denied.

(c) *Class I price and location adjustments.* The Class I price in the Iowa marketing area should be the basic formula price for the second preceding month plus $1.40. It should continue to be announced on the fifth day of the preceding month.

Three pricing zones should be defined for the purpose of determining plant location adjustments. The accompanying map illustrates these zones.

Zone I should include all of the territory, both inside and outside the marketing area, not included in Zones 2 and 3. No location adjustment should apply in this territory.

Zone 2 should include the Iowa counties of Marshall, Tama, Benton, Linn, Poweshiek, Iowa, Johnson, Jones, Clinton, Cedar, Scott, Muscatine, Keokuk, Washington, and Louisa, and also the Illinois counties of Rock Island, Henry and Mercer. A minus location adjustment of 7 cents should apply in Zone 2.

Zone 3 should include the Iowa counties of Alamakee, Black Hawk, Bremer, Buchanan, Butler, Cerro Gordo, Chickasaw, Clay, Clayton, Delaware, Dickinson, Dubuque, Emmet, Fayette, Floyd, Franklin, Grundy, Hamilton, Hancock, Hardin, Howard, Humboldt, Jackson, Kossuth, Mitchell, Palo Alto, Pocahontas, Webster, Winnebago, Winneshiek, Worth, and Wright; the States of Minnesota and Wisconsin; and that portion of Illinois north of Interstate 80. Location adjustments in Zone 3 should be based on mileage from three basing points—Ames, Marshalltown, or Cedar Rapids, Iowa. The location adjustment would be computed by subtracting 7 cents and an additional 1.5 cents per 10 miles that a plant is located from the nearer of the Post Offices in Ames, Marshalltown, or Cedar Rapids.

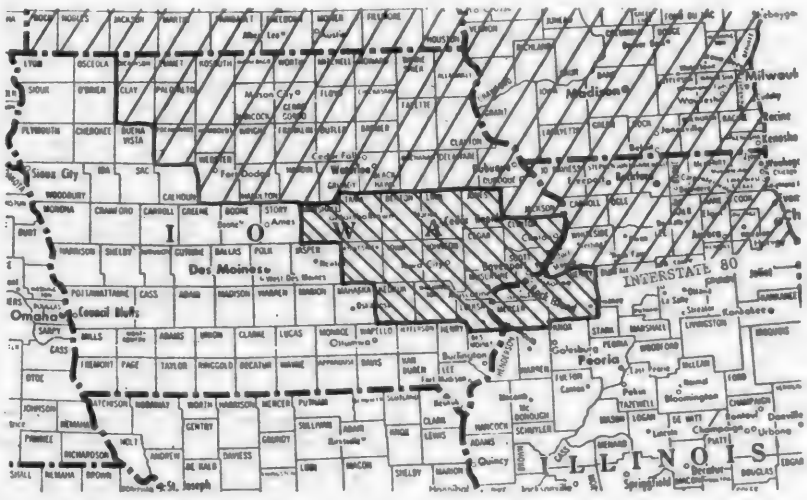
Presently, the Class I differential under the Des Moines order is $1.40. For plants located outside the marketing area and betwen 60 and 75 miles from Des Moines or Ottumwa, the Class I price is reduced by 10 cents and by an additional 1.5 cents per 10 miles beyond 75 miles.

PLANT LOCATION ADJUSTMENTS - IOWA MARKETING AREA

ZONE 1, No adjustment

ZONE 2, Minus 7 cents

ZONE 3, Minus 7 cents and minus 1.5 cents per 10 miles from nearer of Ames, Marshalltown, or Cedar Rapids



The Class I differential under the Cedar Rapids-Iowa City order is $1.33. For plants located between 50 and 65 miles of the nearer of Cedar Rapids or Iowa City, the Class I price is reduced by 10 cents and by an additional 1.5 cents per 10 miles beyond 65 miles.

The Class I differential for the Quad Cities-Dubuque market is also $1.33. It is reduced by 10 cents in Dubuque and Jackson Counties and in East Dubuque, Illinois. There are various plus and minus location adjustments in areas outside the marketing area.

The North Central Iowa marketing area is now divided into four pricing zones. The Class I differential in Zone I is $1.25. In the remaining three zones, it is adjusted to $1.33, $1.20, and $.15. At locations outside the marketing area that are more than 65 miles from the nearer of Fort Dodge, Marshalltown, Mason City, and Waterloo, there is a location adjustment of minus 10 cents for the first 65 miles and an additional 1.5 cents per 10 miles thereafter.

The heaviest milk production in the Upper Midwest stretches from central to southeastern Minnesota into northeastern Iowa and into southern and central Wisconsin. When local market supplies are inadequate for Class I needs, it is this heavy production area that must be considered the prime reserve supply area. In fact, as mentioned earlier, significant quantities of milk for the Iowa markets already come out of southeastern Minnesota and western Wisconsin.

In order to encourage milk to move from production areas to consumption areas, prices must be aligned so as to cover transportation costs associated with distance and provide a favorable return compared to alternative local manufacturing outlets or other fluid markets. A differential of $1.40 in the base zone for the Iowa marketing area will provide the necessary economic incentive to attract the needed supplies. As indicated, this is the Class I differential presently applicable in the Des Moines market.

The National Farmers Organization proposed a pricing structure comprised of four pricing zones with Class I differentials ranging from $1.50 in southern Iowa and Missouri to $1.26 in Minnesota

and Wisconsin. However, in its brief, NFO modified this proposal to include six pricing zones, with Class I differentials ranging from $1.50 in the southern half of Iowa to $1.06 in Minnesota and Wisconsin.

The NFO proposal, as modified, should not be adopted. The proposal would increase the Class I differential from $1.40 to $1.50. This increase cannot be justified on the basis of this record. There was no evidence to suggest that such an increase was necessary to insure an adequate supply of milk for the Iowa market, which in 1975 had a Class I utilization slightly above 50 percent. As noted in the discussion on pooling standards, substantial quantities of milk are already available in Iowa for the fluid market.

Although the NFO proposal is structured to provide location adjustments that would align prices with neighboring markets, the price-breaks between zones are of necessity rather large (23 cents between zones III and IV, for example). Such a large change in price might unduly influence plant location and milk movements merely to take advantage of a higher price zone. This would be disruptive to orderly marketing.

Because any zone pricing involving only a few zones north into Minnesota and Wisconsin would—even with a Class I differential of $1.40—involve rather large price increments, a zone pricing structure based on 10 mile increments should be adopted for the heavy milk production area in northeastern Iowa and farther north into Minnesota and Wisconsin.

The pricing structure adopted herein is very similar to that proposed by Proponent No. 1. However, Zone 1 as adopted herein does not include Poweshiek County, as proposed by Proponent No. 1. Poweshiek County should be excluded from Zone 1 because geographically it is located about the same distance from the main production area for the market as are plants in the Zone 2 suggested by proponents.

The president of Boone Dairy, speaking also on behalf of Boyd's Dairy at Boone, Iowa, proposed that Boone and Story Counties be priced 15 cents below the price in the Des Moines area. He testified that, prior to December 1971, Boone and Story Counties were priced 10 cents below Des Moines. However, at a public hearing held in April of 1971 it was proposed that this minus location adjustment be removed. Since there was no opposition to this proposal, the minus 10 cents was removed effective December 1, 1971.

The witness testified that he and other handlers in Boone and Story Counties erred in not being present at the April 1971 hearing. He contends that, in any event, the decision based on that hearing does not give any material reasons for the change. By contrast, he cited an April 1969 decision which defends and reaffirms the need for a minus 10-cent location adjustment in Boone and Story Counties.

This handler testified that he distributes only in Boone and Story Counties and that he competes extensively with handlers to the north of him. He cited handlers in Rochester, Waterloo, Omaha, and Des Moines with whom he competes. He contends that the present and proposed pricing structure would put him at a competitive disadvantage with respect to his major competitors from the north.

On the basis of this record, it is concluded that the price in Boone and Story Counties should be the same as the price at Des Moines, about 40 miles south of Boone.

The primary contention of the Boone handlers is that the current and proposed pricing structure puts them at a competitive disadvantage with plants to the north of them. In particular, they cited a plant at Rochester, Minnesota, and one at Waterloo, Iowa.

It is widely accepted that the cost of transporting packaged fluid milk products is at least the 1.5 cents per hundredweight per 10 miles location adjustment rate provided under the order and probably more than that. Under the Upper Midwest order, the Rochester plant has a Class I differential of $1.12 per hundredweight. Since Rochester is about 200 miles from Boone, the cost for transporting milk from Rochester to Boone is at least 30 cents per hundredweight. Thus, the Rochester plant has an effective Class I differential of $1.42 at Boone, compared to Boone's Class I differential of $1.40 under the Des Moines order.

Waterloo is approximately 110 miles from Boone. The Class I differential at Waterloo is presently $1.25. Adding transportation at 1.5 cents per 10 miles, the Waterloo plant has an effective Class I differential cost of $1.41 at Boone.

These figures, which must be considered minimum costs, clearly refute the Boone spokesman's argument that the order prices put Boone at a disadvantage with its competition from the north. If competing handlers have a competitive advantage over Boone Dairy, it is likely that economies of large scale operation is the reason for it and not the minimum Class I price under the order.

The Boone witness did not know how his proposed 15-cent price reduction would affect his procurement of milk. However, it is certainly doubtful that the handler could procure his supply of milk at 15 cents per hundredweight under the price at Des Moines, since the cooperative which supplies him has the option of delivering the milk to Des Moines. Therefore, even if the order price were reduced, as he suggests, in all probability he would still have to pay an effective price to the co-op equal to what he is paying now.

As mentioned above, the witness cited a 1969 decision which removed a minus 10-cent location adjustment in all of the counties in the Des Moines marketing area with the exception of Boone and Story Counties. At the time of that hearing, there was a handler at Fort Dodge, in Webster County (directly north of Boone County), regulated under the North Central Iowa order, and there were two handlers at Ames, in Story County. A handler at Marshalltown, in Marshall County (adjacent to Story County) competed with the Ames handlers in Ames. The Marshalltown handler had a price under the North Central Iowa order that was 5 cents lower than the Des Moines order price at Ames. The transportation from Marshalltown to Ames was equal to about 6 cents per hundredweight. Therefore, to remove the minus 10-cent location adjustment in Story County at the time of the 1969 hearing would have put the Ames handlers at a competitive disadvantage with respect to the Marshalltown handlers.

A similar situation existed with respect to the Boone handlers. The Fort Dodge handler, who by the 1971 hearing had gone out of business, had a Class I price that was 10 cents below the price at Boone. The distance from Fort Dodge to Boone is 50 miles, which would support a transportation allowance of about 7.5 cents. If the minus 10-cent location adjustment had been removed from Boone County at that time, the Boone handlers would have been at a serious price disadvantage with respect to the Fort Dodge handler. It was primarily for this reason—competition among handlers—that the minue 10-cent location adjustment was not removed from Boone and Story Counties.

By 1971, the situation had changed considerably. The two Ames handlers and the Fort Dodge handler were no longer in business. Thus, the competive situation was substantially different at the time a Des Moines handler proposed at the 1971 hearing that Boone and Story Counties be includde in the base zone (i.e., removing the 10-cent location adjustment). The 1971 amendments resulting from that hearing removed the 10-cent location adjustment from Boone and Story Counties. The change in price was deliberate and was supported by evidence and was not an oversight as suggested by the Boone handler.

Zone 2 adopted herein differs from the proposed Zone 2 by the exclusion of Jackson County.

There is one pool distributing plant in Jackson County in Maquoketa. Jackson County, presently part of the Quad Cities-Dubuque marketing area, has an adjusted Class I differential of $1.23. Proposal #1 would increase the differential to $1.33. Since Jackson County is close to the heavy milk production area in northeastern Iowa, there is no need to increase the Class I price 10 cents in this county to insure an adequate supply of milk for the Maquoketa handler. Moreover, since Jackson County borders on the Chicago Regional market, which has an adjusted Class I differential of $1.10 in adjacent Jo Daviess County, a differential of $1.33 in this county would clearly worsen price alignment between the two orders. For these reasons, Jackson County should be included in Zone 3. At Maquoketa, Iowa, the Class I differential under the merged order thus would be $1.24, one cent more than it is now under the Quad Cities-Dubuque order.

Proponent #1 proposed a location adjustment of minus 15 cents in their Zone

3, which included a band of 13 counties directly north of their Zone 2. They proposed a fourth zone, comprised of six counties directly north of Zone III, that would carry a location adjustment of minus 20 cents.

The location adjustments adopted herein do not differ appreciably from those proposed by Proponent #1 but do provide a more gradual decline, thereby eliminating large price-breaks at county lines. A breakdown of the adjusted Class I differential at present, as proposed, and as adopted herein at various locations is shown in the following table:

TABLE 4.—*Adjusted class I differential—Iowa market*

Location	Presently	Per proposal No. 1	Per NFO proposal	As adopted
Des Moines	1.40	1.40	1.50	1.40
Pella	1.40	1.40	1.50	1.40
Ottumwa	1.40	1.40	1.50	1.40
Corydon	1.40	1.40	1.50	1.40
Boone	1.40	1.40	1.50	1.40
Marshalltown	1.33	1.33	1.35	1.33
Cedar Rapids	1.33	1.33	1.35	1.33
Iowa City	1.33	1.33	1.35	1.33
Quad Cities	1.33	1.33	1.35	1.33
Maquoketa	1.23	1.33	1.35	1.24
Dubuque	1.23	1.25	1.35	1.225
Waterloo	1.25	1.25	1.35	1.24
Stacyville	1.165	1.20	1.35	1.165

For a plant located outside the Iowa marketing area, inside some other Federal order marketing area, Proponent #1 proposed a Class I location adjustment that would result in the same price under the Iowa order as would be applicable under the order in which the plant was located. For a plant located outside of any Federal order marketing area, proponent proposed a minus location adjustment at the rate of 1.5 cents per 10 miles from the nearer of Des Moines, Davenport, or Waterloo.

As adopted herein, plants that may be located in lower priced marketing areas would be located in Zone 3 and would, accordingly, have a minus location adjustment based on the distances from Ames, Marshalltown, or Cedar Rapids. All locations that are not included within Zones 2 or 3 would be included in Zone 1, with no location adjustment applicable.

The Class I price adopted herein for the merged order is the price that is considered necessary to attract adequate milk supplies to the market for fluid use. However, because milk supplies often must be moved from distant supply plants to the market center, it is necessary to adjust the Class I price downward at such plants because of the costs involved in moving the milk. Without such adjustments, distributing plant operators could not attract the milk to the market center unless they assumed the cost of transporting the milk. This would place such handlers at a competitive disadvantage relative to other handlers at the market center who receive milk directly from producers and who thus do not incur the additional transportation costs.

Customarily, Class I prices under the Iowa orders have been reduced at distant plants irrespective of their location. Under the merged order, however, downward adjustments should be applicable only in those areas from which milk supplies logically would be drawn for the Iowa market. Milk supplies in Minnesota, Wisconsin, and northeastern Iowa are very heavy, while in areas south and west of Iowa milk supplies are generally much less plentiful. Thus, Iowa handlers should not be encouraged to procure milk from plants in these tighter-supply areas through the application of minus location adjustments. In the interest of marketing efficiency, any available milk supplies in the southern and western areas should be encouraged to move to those markets that are more distant from the heavy production areas than is the Iowa market.

Although Proponent #1 proposed that plus location adjustments be applicable in areas generally south and west of the Iowa market, the record does not indicate a need at this time for adjusting the Class I price upward in these areas. Presently, none of the plants now pooled under the four Iowa orders is located south or west of the marketing area adopted. Moreover, because the Class I prices in the southern and western areas are generally higher than the Class I price for the Iowa market, distributing plants in these areas normally would not be expected to become associated with the Iowa market to the extent that they would become pooled under the Iowa order.

Should such a plant become regulated by the Iowa order, it is reasonable to expect that the plant operator would have to pay more than the base zone Class I price to obtain a supply of milk on a normal and regular basis. The handler would still be competing with nearby handlers for milk supplies and presumably would have to pay the higher price prevailing in his local area. On this basis, the Class I price applicable under the Iowa order in areas to the south and west of the Iowa marketing area perhaps should be comparable to the Class I prices prevailing in those areas. From an administrative standpoint, however, it is difficult to provide under the Iowa order a broad price structure that would parallel the prices prevailing at various locations in the southern and western areas. Thus, in the absence of testimony with respect to specific plant locations that require special consideration at this time, it is preferable that no plus adjustments be established under the order for areas south and west of the central market.

To encourage efficient movement of milk between plants under Federal orders, it is generally necessary, either through the allocation procedure in the assignment of milk receipts to classes of utilization or in the application of location adjustment credits, to protect the pool from bearing the costs of unnecessarily moving milk to the central market for other than Class I use. In the Iowa markets, this has been done by assigning location adjustment credits for Class I milk transferred between pool plants first to the transferor plants at which the least location adjustment applies and then in sequence to plants having the next least location adjustment (or the next highest price). This procedure is intended to encourage milk to come from the closest sources of production.

Proponent No. 1 testified in opposition to the present procedure. The cooperatives object to the amount of location adjustment credits assigned and to the manner in which they are assigned.

With regard to the first point, a spokesman presented data showing the unavoidable Class II and Class III utilization associated with Class I use at the Land O'Lakes, Cedar Rapids, Iowa, distributing plant during the period from March 1975 through February 1976. There were four types of non-Class I uses involved: (1) Disposing of excess cream resulting from standardization of milk to a lower fat content than that of milk received from the farm: (2) route returns that were disposed of for animal feed; (3) inventory variation (fluid milk products that are classified as Class III because they are in inventory at the end of the month); and (4) shrinkage.

The witness testified that an allowance should be provided for this unavoidable Class II and III utilization based on the highest possible unavoidable Class II and III use that might be experienced in a plant. He computed this figure by taking the highest percentage use in each of the four categories for the 12-month period and arrived at a potentially unavoidable Class II and III use of 11.25 percent of Class I sales. The monthly unavoidable Class II and III use for this period ranged from 2.6 to 9.9 percent of Class I sales.

The witness also testified that the unavoidable Class II and III uses at the Cedar Rapids plant might be understated for a variety of reasons. Therefore, he proposed that an allowance of 15 percent be provided for unavoidable Class II and III utilization.

Presently, no allowance for unavoidable Class II and III utilization is provided under Orders 63 and 78; an allowance of 5 percent is provided under Orders 70 and 79.

It is concluded on the basis of the evidence presented that an allowance of 10 percent should be provided under the merged order. A 10 percent allowance should accommodate the necessary Class II and III use experienced by most plants in the market. An allowance above 10 percent, as proposed, is clearly excessive and should not be adopted.

The second objection voiced by the witness was the manner in which the location adjustment credits were allocated. Under the Des Moines order, Class I location adjustment credits are determined by first subtracting receipts from unregulated supply plants and other order plants that are assigned a Class I classification and then subtracting from the remaining Class I use at the transferee-plant receipts from producers and from cooperative associations acting as handlers on bulk tank milk.

The remaining Class I milk is then allocated to transferor-plants, allocating

it first to the closest plant and then to progressively more distant plants until all of the Class I milk is allocated.

Opponents of this procedure argued that all bulk receipts of milk at the plant should share pro rata in the plant's Class I utilization. It was charged that the present procedure gives preference to receipts from unregulated supply plants and other order plants.

Presently, the Des Moines order does, in fact, assign Class I milk first to bulk receipts from unregulated supply plants and other order plants in computing location adjustment credits. However, it should be noted that, under the allocation provisions of the order, such receipts are allocated pro rata to the classes of utilization in the transferee-plant. Accordingly, such other source milk does not receive a disproportionate share of the Class I utilization, as charged.

The milk received directly from producers and cooperative associations does receive a priority assignment to Class I for location adjustment credit purposes, though, since 100 percent of these receipts are subtracted from the remaining Class I milk at the transferee-plant prior to assignment of receipts from transferor pool plants. The allowance for 10 percent unavoidable Class II and III use at the transferee-plant, however, should facilitate the transportation of supply plant milk needed at distributing plants for Class I use.

The aggregate amount of Class I milk assigned to transferor pool plants for location adjustment credit purposes should be prorated to each transferer pool plant based on the proportion of receipts from each plant. This will assure that each transferor pool plant gets a proportionate share of the Class I location adjustment credits, instead of, as presently being done, giving preference first to the closest plant and then to successively more distant plants.

The latter procedure was adopted to encourage milk to come from the closest sources of production, thereby eliminating unnecessary transportation. However, changes in milk marketing have made this procedure impractical and inappropriate for the merged Iowa market.

Whereas, in the past, a handler would bottle a fairly even amount of milk six or seven days a week, now handlers bottle on only 4 or 5 days a week, and there is a wide variation in the amount bottled from one day to the next. Accordingly, on certain days handlers may require more milk than can be supplied from the nearest supply plant. However, if a handler purchases milk from more than one supply plant, the more distant supply plant may not be allocated its proportionate share of Class I location adjustmet credits. To avoid this problem, a handler would have the incentive to purchase all of his milk from a larger, but more distant, supply plant, thereby being assured that all of the milk purchased from the supply plant would get the maximum amount of Class I location adjustment credits available. Under these cirumstances, the provision now in the orders would result in greater transportation costs from the pool—exactly the opposite of what it is intended to do.

The pro rata assignment of location adjustment credits will provide greater equity for milk trasferred from supply plants to distributing plants because all plants will share equally in the Class I location adjustment credits, regardless of their location. Since supply plant pooling standards may be met by direct deliveries from producers' farms, it may be presumed that, when milk is transferred to pool distributing plants, such transfers reflect a need for milk that can not otherwise be met. In view of this, the interest of both handlers and producers will best be served by providing for equal treatment to all supply plants that ship milk to a pool distributing plant.

Mississippi Valley Milk Producers Association, in its brief, urged that the allowance for location adjustment credits be increased to 125 percent of the Class I milk in the plant to accommodate "companion products" (products other than fluid milk products) that are also produced by handlers to augment area needs of consumers. MVMPA stated that the allowance of 15 percent above Class I proposed at the hearing will not adequately serve the market and may restrict unnecessarily the movement of milk to market, presumably because the allowance will not provide transportation credits for milk intended for Class II and III use.

Only that milk needed for Class I use should be encouraged to move from production areas to bottling plants. That is why location adjustments for handlers apply only on Class I milk. No location adjustments are applied to Class II and Class III milk, so as not to encourage the movement of milk for such uses. Rather than be processed at the city, manufactured products should be processed and packaged near procurement areas and transported to the central market in finished form, since it is cheaper to transport these products in packaged form than to ship the bulk milk necessary to manufacture them.

It has been argued by Mississippi Valley and others, however, that Class II products are part of a handler's regular product line. Many handlers expect to receive a regular supply of milk for Class II use as well as Class I.

It would not be appropriate under the order to encourage the movement of milk to the city for Class II use unless handlers paid for such transportation under the order. Otherwise, the handlers would get free transportation of this milk at the expense of all producers in the market. If handlers want milk at deficit production locations for Class II use, they should be willing to pay for it, either under the order or outside the order. Under the order, this could be accomplished by substantially increasing the Class II price. Location adjustments could then be incorporated in the order to accommodate the movement of milk for this use. Any further accommodation for the movement of milk for Class II use should be accompanied by some restructuring of the classification and pricing provisions for such milk under the order, which is beyond the scope of this hearing.

Pricing milk not needed for Class I use. The Class II price under the merged order should be the basic formula price for the month plus 10 cents. The Class III price should be the basic formula price for the month. These prices should be announced by the 5th day after the month to which they apply.

These prices were proposed by all of the proponent organizations and are now applicable under each of the orders to be merged. They were adopted for all of these orders in conjunction with the 39-market classification proceedings referred to earlier in this decision and are appropriate for the identical reason for which they were adopted in the separate orders.

Butterfat differential. A single butterfat differential should apply under the merged order. It should be computed by multiplying the average Chicago 92-score butter price for the month by 0.115 and rounding such amount to the nearest 0.1 cent. The differential should be announced by the market administrator by the 5th day after the end of the month in which it applies. This differential is now applicable under the separate orders and was adopted in conjunction with the uniform classification plan now in use.

Land O'Lakes proposed that the butterfat differential be reduced to 10.5 percent of the Chicago 92-score butter price. No other parties supported the proposal either at the hearing or in the briefs that were filed. NFO opposed the reduction in its brief.

LOL spokesman testified that the butterfat differentials now under the separate orders price surplus cream considerably higher than its market value. He presented a table showing that LOL's Cedar Rapids plant lost from $1.86 to $4.26 per hundredweight on its sales of surplus cream between January and December of 1975. He also presented a table showing the effect of his proposed lower butterfat differential for the same period. With a butterfat differential of 10.5 percent of the Chicago 92–score butter price, LOL would have lost as much as $1.71 per hundredweight in January 1975 and would have gained up to $1.66 per hundredweight during December 1975.

The witness stated that a fluid milk handler buying whole milk is at a disadvantage compared to one who buys skim milk since the former must absorb a loss on the cream portion of his milk. He acknowledged, however, that LOL charges over-order prices on skim milk sold to handlers which would reduce this advantage.

The testimony given by the witness raises some serious questions about the appropriateness of the present butterfat differential in this area of the country. It would appear that, if it were not for other overriding considerations that relate to this issue, some reduction in the butterfat differential could be justified based on his testimony. However, other factors must also be considered, such as the wide-ranging repercussions such a change would have on intermarket competition.

Since the market for butter, nonfat dry milk, and cheese is national in scope, handlers in surrounding markets would be adversely affected by such a change since it would give handlers in the Iowa market a competitive advantage with respect to milk products testing above 3.5 pecent butterfat. Similarly, handlers manufacturing products that require milk testing below 3.5 percent butterfat would be at a competitive disadvantage compared to handlers in other markets because the cost of milk with less than 3.5 percent butterfat would be increased.

The matter of the appropriate butterfat differential was an issue dealt with fully in the 39-market proceedings mentioned earlier. Although the present record indicates that some reduction in the butterfat differential might be appropriate, such a modification must be accomplished on a regional or national basis if orderly marketing is to be maintained.

(d) *Distribution of Proceeds to Producers.* A marketwide pool should be provided under the merged order as a means of equitably distributing among all producers in the market the total proceeds derived from the sale of producers' milk by all regulated handlers. Under marketwide pooling, one uniform price, adjusted for location of the plant to which the milk was delivered, is paid to all producers regardless of how a particular producer's milk is used by the handler to whom it is delivered. By receiving payment at the market uniform price, each producer shares equally in the higher-valued Class I milk of the market as well as in the lower-valued Class II and Class III uses of milk. This type of pooling is now being used in three of the four Iowa orders and was supported by all parties of interest for use under the merged order.

The North Central Iowa market is now an individual handler pool. As such, a uniform price is computed for each handler based on the utilization of his milk.

This type of pooling would be contrary to the proposals and testimony offered by all of the interested parties involved. One of the primary reasons for the merger is that a broad sharing of returns is needed for producers supplying handlers in this common procurement and marketing area. This can only be accomplished through a marketwide pool.

Computation and Announcement of Uniform Price

A uniform price to producers should be computed for each month by the market administrator and announced by the 12th day of the following month.

Presently, all four individual orders provide for announcement of the previous month's uniform price by the 10th day of the month. Proponent #1 recommended extending the announcement date by two additional days to compensate for the additional day given to handlers in filing reports of receipts and utilization and also to allow the market administrator one additional day to compute the uniform price. This proposal should be adopted.

NFO proposed computation of a uniform price based on estimated pool values. This type of provision was recently incorporated in the new Upper Midwest order. Its principal advantage is that it allows somewhat earlier announcement of the uniform price, since the market administrator does not have to wait until all reports are processed.

This provision should not be adopted for the merged Iowa market because of the much greater chance for error in esstimating a price for this much smaller market. While the Upper Midwest market has in excess of 400 million pounds of milk per month, the Iowa market will average only slightly more than 100 million pounds per month. Combined with the higher Class I price and Class I utilization for the Iowa market, this makes it much more difficult to accurately estimate the uniform price. For these reasons, this procedure should not be adopted for the Iowa market.

Proponent #1 proposed a provision that is not presently in the separate orders which would allow the market administrator to include in his computation of the uniform price the report of a handler who has not made payment to the producer-settlement fund for the preceding month if the unreserve cash balance in the producer-settlement fund is not less than two cents per hundredweight. A witness testified that this language is intended to prevent complete depletion of the producer-settlement fund in the event a handler defaults on his payments.

Presently, the orders exclude from the current month's pool computation the reports of handlers who failed to make payments to the producer-settlement fund for the preceding month. The proposal would include those reports if there is two cents per hundredweight unreserved cash balance in the producer-settlement fund.

Technically, the present provision of the orders would exclude a handler from the pool, even though he owed only a very small amount to the producer-settlement fund. Such obligation could have resulted in an error discovered during audit of the handler's records.

No purpose is served in excluding a handler's report from the pool computation, except to guard against depletion of the fund to where obligations from the fund cannot be paid in the event the handler defaults on his obligation. The proposed two-cent per hundredweight balance provides sufficient safeguard to preclude this from happening.

Payments to producers. The merged order should continue to require handlers to make payments to cooperative associations and producers for milk received. This is now the method of payment under each of the four orders.

Proponent #1 proposed a payment plan whereby all handlers receiving milk from a cooperative association would pay their total pool obligation for such milk to the market administrator who, in turn, would pay the cooperative associations. Under their plan, proprietary handlers who have not been delinquent in their payment obligations under the order would be allowed to pay their nonmember producers if a cooperative association is not collecting payment on their behalf.

Proponents' witness testified that their proposal would provide handlers with a stronger incentive for making prompt payment of their order obligations because handlers tend to pay the Market Administrator on a timely basis. He stated that late payments by certain handlers could result in an inequitable situation for those handlers making timely payments because the delinquent handlers are using money due producers to overcome cash-flow problems, while the prompt handlers with similar problems must borrow money or use their own capital.

The witness also testified that the proposed payment procedure would make it easier for the market administrator to enforce timely payments to producers. Proponents contend that their proposal would strengthen the position of the market administrator considerably in any legal proceeding involving payment, since the amount owed would be to the producer-settlement fund.

In support of their proposal, proponents offered an exhibit purporting to show late payments by six handlers. Proponents did not identify the six handlers, but conceded that they could include both proprietary handlers and co-op handlers.

The exhibit showed that for the 12 months of 1975, the six handlers averaged 3.4, 1.9, 14.5, 1.8, 10.5, and 12.9 days late in making the partial payment and 6.8, 2.4, 12.0, 3.8, 10.0, and 16.3 days late in making the final payment. In computing these figures, proponent considered payments to be late if not received by the date specified in the order.

The market administrator of the four Iowa orders has considered payments to be on time if postmarked by the date specified in the orders. With this interpretation, two of the six handlers included in the survey may not actually have been late in making the payments, since two or three days for mail delivery is not uncommon.

Also, it is possible that one or more of the three chronically late-paying handlers included in the survey are cooperative associations. The proposed provision would do nothing to insure prompt payment from such handlers, since, under the proposal, cooperatives are allowed to offset payments to the producer-settlement fund by the amount of payments due from the market administrator.

The largest handler in the four Iowa markets stated in his brief that he has never failed to make timely payments. He emphasized that only proprietary handlers would be required to make payments to the producer-settlement fund. Consequently, a cooperative handler would have the use of its money for this period of time, with the result that a cooperative handler would have an unfair advantage over a proprietary handler.

Proponents testified that this advantage was not intended and that their

proposal should be modified to provide equal treatment between proprietary handlers and cooperative association handlers.

Proponents have not made a convincing argument as to the need for channelling payments through the market administrator. They have not, by their own admission, strictly enforced prompt payments by handlers, either through threatening to cut off supplies or by charging interest on late payments. Proponents indicated that the competitive situation precluded them from taking such steps.

Under the merged order, cooperatives should have a stronger hand to enforce prompt payments by handlers. The broader pooling opportunities under the merged order will ease the pressure to maintain customers who do not pay their bills on time. Accordingly, cooperatives should be better able to enforce prompt payments without subjecting those handlers who are conscientious about making timely payments to their proposed payment arrangement.

In referring to the payment dates specified below, it is intended that payments must be postmarked by such dates, rather than be received by such dates. If a payment must be postmarked by a certain date, it reasonably should be received a day or two later.

Under the terms adopted herein for the merged order, milk received from a cooperative acting as a handler for farm bulk tank milk will be treated as an interhandler transfer but will be classified pro rata with producer milk at the transferee-plant. The pool plant operator will be obligated to the producer-settlement fund for the milk received directly from producers and by transfer from bulk tank cooperative handlers at its classified use value.

In its capacity as the operator of a pool plant, the cooperative association will account to the pool at class prices for milk transferred to other pool plants. The transferee-handler will pay the cooperative the class prices for such milk.

A handler should be required to make a partial payment to a cooperative association or a producer on or before the last day of the month for milk received during the first 15 days of the month. The partial payment should be at the uniform price for the preceding month adjusted at the handler's plant location.

Final accounting for milk from producers and cooperative bulk tank handlers will be completed after the end of the month. Handlers will be required to submit to the market administrator a report of all receipts and utilization by the 8th day after the end of the month. The uniform price is announced by the 12th day. On the 12th day, handlers are required to pay cooperative associations for all skim milk and butterfat received from pool plants operated by such cooperative associations at not less than the class prices, as adjusted by the butterfat differential, applicable at the location of the receiving handler's pool plant less the amount of partial payment. Earlier payment on such plant milk is necessary to allow the cooperative association operating the transferor pool plant to meet any possible obligation to the producer-settlement fund.

Handlers whose pool obligation exceeds the value of their producer milk at the uniform price should be required to make payment to the producer-settlement fund on or before the 15th day after the end of the month. On or before the 17th day after the end of the month, the market administrator will make payments to handlers whose total pool obligation is less than the value of their producer receipts at the uniform price.

Final payment by proprietary handlers to cooperative association handlers on farm bulk-tank milk will be made on or before the 18th day after the end of the month. Such payment will be at not less than the uniform price for the month, less the amount of partial payment made for milk received during the first 15 days of the month. On or before the 18th day after the end of the month, handlers will also make final payment to each producer for milk which was not caused to be delivered by a cooperative association acting as a handler on farm bulk tank milk. Such payment will also be at the uniform price for the month, less the amount of partial payment for milk received during the first 15 days of the month.

This schedule of reporting and payment dates adopted is intended to insure producers prompt payment for their milk. It closely resembles the payment schedule proposed, except for the interpretation of the dates specified, which are considered to be postmark dates.

Plant location adjustments for producers and on nonpool milk. The uniform price to producers should be adjusted for the location of the plant of actual receipt. The location adjustments should be the same as those provided for handlers with respect to Class I milk. The uniform price applicable to other source milk should also be adjusted at these rates, except that the adjusted uniform price should not be less than the Class III price.

Provisions of this nature are included in the four Iowa orders. They were proposed for the merged order by Proponent #1.

The National Farmers Organization proposed that there be no location adjustments for producers, but that there be credits from the pool for supply plants and reload points that ship milk for Class I use to pool distributing plants. Four basing points were proposed for this purpose. Location adjustments would be computed at the rate of 8 cents for the first 45 miles and 2 cents per 10 miles thereafter that such supply plant or reload point is located from the nearer of Des Moines, Rock Island, Cedar Rapids, or Dubuque.

A NFO spokesman testified that the practice of equating location adjustments to producers with Class I location adjustments for handlers creates inequities. He stated that, from a cost of production viewpoint, there is no legitimate reason for paying a producer a lower price because he happens to be located farther from a market than another producer.

He stated the proposed pool credits, coupled with a flat price to producers, would bring about a much more equitable arrangement in the marketing of Federal order milk.

The pricing structure in the Federal order system generally increases from north to south to reflect costs associated with distance in transporting milk from surplus milk production areas to deficit areas. Accordingly, a dairy farmer always has the choice of shipping his milk to the local market or shipping it to a higher priced market at his own expense. If the price in the alternative market will at least equal the local market price plus transportation, the dairy farmer will have the incentive to ship his milk to the alternative market.

Under the NFO proposal, all producers supplying the market would receive the same uniform price. This would result in a substantial redistribution of income from producers in the southern part of the market to those in northeastern Iowa and into Minnesota and Wisconsin.

The reduction in price to producers in central and southern Iowa would make alternative market prices very attractive. Thus, there would be an undue price incentive for such producers to associate with the St. Louis, Southern Illinois, or Kansas City markets, to name a few.

The proposal would also have a disruptive effect on price alignment in southern Minnesota and west-central Wisconsin, since the Iowa uniform price would provide an incentive for producers supplying the Upper Midwest and Chicago markets to switch over to the Iowa market. This would cause handlers in the former two markets to pay excessive prices in order to hold their milk supply.

The NFO proposal would provide no incentive for producers to move their milk to other than the closest outlet, since they would get the same price whether they shipped their milk to a supply plant five miles from their farm or to a city distributing plant 70 miles away. Furthermore, the proposal would force all milk into the nearest pool plant, which is not likely to be a pool distributing plant, since most of the milk supply of Iowa handlers is produced in northeastern Iowa. The milk would then have to be transferred to pool distributing plants. Although, in many cases, this milk can be moved more efficiently on a direct-ship basis, the incentive would be to move it from a supply plant to a distributing plant because only in that way can transportation cost be recovered.

While under the NFO proposal producers would get no reimbursement for transportation through a higher uniform price, supply plants would seemingly—and perhaps inadvertently—get a double location adjustment for milk transferred for Class I use. This is because the NFO proposal provides a minus 15-cent location adjustment between Zones I and III. On top of the 15 cents, there would apparently be a further transportation credit based on the distance from the supply plant to the nearest basing point.

In light of the above considerations, it is concluded that the NFO proposal would promote inequities and a misallocation of resources, and would not be conducive to the most efficient marketing of milk. For these reasons, the proposal is denied.

SERVICE CHARGES

Service charges for milk received from a cooperative association should not be adopted for the merged order.

Land O'Lakes, Inc., proposed that service charges be incorporated in the order to accommodate the recovery of a cooperative association's costs for field services, testing for milk quality, coordination of milk movements, disposition of reserve supplies, producer payrolls, and operation and maintenance of storage and handling facilities. Its proposal would provide a charge of 10 cents per hundredweight on milk delivered directly from the farm to a handler's plant and 18 cents per hundredweight on milk delivered from a supply plant to a handler's plant.

A Land O'Lakes witness testified that most cooperative associations supplying proprietary handlers are able to recover the cost of various services rendered through service charges levied by the cooperative. He said, however, that not all cooperatives in the Iowa marketing area always levey such a charge and the charges that are made vary from organization to organization and possibly from customer to customer. Consequently, a milk distributor who pays a small charge or none at all has a procurement cost advantage over a competitor buying milk from a cooperative that does charge for services rendered. The witness concluded that this situation is not in keeping with the legislative requirement of the Agricultural Marketing Agreement Act that "prices shall be uniform to all handlers."

Mississippi Valley Milk Producers Association and the National Farmers Organization also gave testimony in support of the Land O'Lakes proposal. A MVMPA spokesman stated that his organization heartily supports Land O'Lakes' proposal. He testified, however, that MVMPA has experienced higher costs than LOL for the services covered in the proposal.

The NFO spokesman testified that, if a service charge is provided for milk received from supply plants, a similar service charge should apply to milk handled through reload stations. He stated that NFO has experienced little, if any, difference in the actual operating cost of a reload station versus a supply plant.

Land O'Lakes presented an exhibit showing the costs experienced by it in providing supply plant milk and direct-shipped milk to other handlers. Although LOL does not presently operate any supply plants under the four separate Iowa orders, the cooperative indicated that its cost in handling milk through supply plants in neighboring markets amount to 18 cents per hundredweight. Its costs on direct-shipped milk were given as 9 cents per hundredweight. These costs are broken down as follows:

TABLE 5.—*Land O'Lakes milk procurement costs per hundredweight for 1975*

Cost item	Supply plant milk	Direct-shipped milk
Depreciation	[illegible]	
Corporate overhead and interest	.0062	
Plant labor	.0498	
Utilities	.0109	
Grade A division overhead	.0170	$0.0170
Shrinkage	.0307	.0065
Producer payroll costs	.0122	.0122
Field service	.0281	.0281
Quality testing	.0066	.0066
Total	.1803	.0901

As proponent pointed out, a basic requirement of the statutory authority for milk orders is that the class prices established thereunder be uniform to all handlers except for specified adjustments, such as for locations at which delivery of milk is made to such handlers and butterfat content of the milk. It is questionable, however, whether this can be construed to mean that the "cost" of milk shall be uniform to all handlers. Proponent's position would suggest that the orders should assure that the total "cost" of obtaining milk be made the same for each handler in the market. This does not appear to be a reasonable interpretation of the Act, nor does the attainment of such cost uniformity appear feasible.

The Act provides that the class prices under an order are minimum prices that handlers must pay producers or associations of producers for milk. Handlers may, and do, pay producers or their cooperatives prices that are higher than the established minimum level. There is no statutory requirement that such over-order prices be related to specific costs that producers or cooperatives may incur in making milk available to handlers. Even if service charges were applied under the order, handlers could still make additional payments to producers in excess of those necessary to meet the minimum class prices and applicable service charges. Thus, it is difficult to conclude that, under the statutory requirement for uniform class prices to handlers, the order is intended also to assure uniform milk costs to all handlers in a regulated market.

From a practical standpoint, it is not possible to assure that all handlers incur the same costs in obtaining their milk supplies. The extent of the procurement costs incurred by competing handlers may be influenced by any number of things. A handler may choose to obtain his milk supply directly from producers, for example. In doing so, a small handler may be able to limit his procurement activities to milk testing and producer payrolling. Other handlers may undertake various additional activities, such as field services, hauling and operation of reload points or supply plants. The cost of such activities may be affected by such factors as the volume of milk handled, location of producers, type and size of hauling equipment, and payrolling procedures, to name just a few. The handler may choose, on the other hand, to obtain his supply of milk solely from a cooperative association, or perhaps just a portion of his supply from a cooperative. Under these arrangements, also, a handler can expect to experience still different sets of costs for his milk supply. Because handlers in Iowa use different means of procuring their milk supplies, the procurement costs can be expected to differ among the competing handlers.

Undoubtedly, wide differences in procurement costs are of great concern to both cooperatives and proprietary handlers. Assuming comparable operating efficiencies, those handlers with the lower procurement costs obviously have a competitive advantage in the marketplace. It is understandable, then, why there is support for the institution of service charges under the proposed Iowa order.

There are significant problems inherent in the establishment of service charges under an order. Some of these are clearly evident from the record of this proceeding. The only detailed cost information introduced at the hearing in support of the proposed service charges was that offered by Land O'Lakes, the proponent cooperative. Actually, the cooperative's supporting data for a service charge on supply plant milk reflected its operating experience in other markets rather than under the four separate Iowa orders. Another cooperative indicated that its costs for similar services were higher than those experienced by Land O'Lakes. Because of differences in their methods of operation, each cooperative in the market can be expected to incur different costs for similar services. This makes it difficult to establish representative service charges under the order. In the case of this proceeding, the record evidence does not provide an adequate basis for determining representative charges.

Other problems are involved, also. Each organization can be expected to allocate costs to various services differently. In the case of Land O'Lakes, the proposed 18-cent service charge for supply plant milk was derived in part from costs for "Corporate overhead" and "Grade A Division overhead." Corporate overhead was not used in arriving at the proposed 10-cent charge on direct-shipped milk. The particular corporate structure and scope of operations for other cooperatives presumably would result in a different make-up of costs for services.

In addition, the question arises as to what services should be represented by any service charge that might be adopted. If a mandatory charge is made for a service or services not wanted by a buying handler, this could place a cooperative's milk at a competitive disadvantage relative to the milk of proprietary supply plants or nonmember producers. A major cost component used in the make-up of Land O'Lakes' proposed service charges was shrinkage. If a pool plant operator were to purchase milk on the basis of farm weights and tests,

the cooperative would not be accountable for any shrinkage and the handler would have no basis for paying a charge on such shrinkage.

Also, service charges incorporated in the order would need to be up-dated on a reasonably current basis if such charges are to be reflective of actual operating conditions in the market. This would place an additional burden on the administration of the program. The level of service charges in Iowa has been determined largely by the competitive forces in the market. Such charges can be changed almost immediately in response to changing conditions.

For these several reasons, it is much more preferable that service charges be a matter of negotiation between cooperatives and buying handlers. The record does not provide compelling reasons for mandating service charges at prescribed levels under the merged order. Accordingly, the proposal for service charges is denied.

(e) *Administrative provisions.—Charges on overdue accounts.* The merged order should provide for charges on handler obligations to the producer-settlement fund that are overdue. Such charge should be at the rate of three-fourths of one percent per month (9 percent annually). The charge should apply beginning the day following the date on which payment of an obligation is due.

It is essential that all handler payments to the producer-settlement fund be made promptly in order that the market administrator will be able to make the required payments out of the producer-settlement fund. A charge on overdue accounts should provide an incentive to handlers to make their payments on time. Moreover, handlers who pay late are, in effect, borrowing money from producers. Without a charge for late payments, handlers delinquent in their payments would have a financial advantage relative to those handlers making timely payments.

It should be noted that such charges are not a substitute for prompt payments by handlers. Those delinquent in their obligations will be subject to legal enforcement action as authorized under the Act.

Presently, none of the four orders provides for a late payment charge. The charge was proposed by Proponent #1. No one testified or filed a brief in opposition to it.

Administrative assessment. The maximum rate of payment by handlers for the cost of administering the merged order should be 4 cents per hundredweight. Currently, the maximum rates under the separate orders are 4 cents per hundredweight under the Cedar Rapids-Iowa City, Des Moines, and North Central Iowa orders, and 3 cents per hundredweight under the Quad Cities-Dubuque order.

Proponent No. 1 proposed a maximum administrative assessment rate of 5 cents per hundredweight. Recognizing that the maximum rate need not be charged by the market administrator, proponent testified that the higher rate would eliminate the necessity of a hearing at some future date in the event administrative costs should rise.

The maximum rate of 4 cents per hundredweight, now included in three of the four orders, should be adequate for the merged order, which can be expected to be administered somewhat more efficiently than four separate orders. It is necessary, of course, that the administrator have adequate funds to perform all of those functions necessary for effective administration. However, if experience indicates that the merged order can be administered at a lesser rate, the Secretary, under the terms of the order, may adjust the effective rate of assessment without the necessity of a hearing.

The administrative assessment should apply to all receipts of milk within the month from producers, including milk of such handler's own production, any other source milk allocated to Class I (except milk so assessed under another Federal order), milk received from a cooperative association in its capacity as a handler on farm bulk tank milk, and milk transferred to a pool plant from a plant owned and operated by a cooperative association. A cooperative association should pay the administrative assessment only on its receipts for which such assessment is not to be paid by other handlers.

The Act provides that the administrative cost of the order shall be borne by handlers and that minimum prices to all handlers be fixed for milk received from producers or associations of producers. When a proprietary handler purchases milk from a cooperative association handler, the assessment should be passed on to the proprietary handler.

Presently, none of the four orders places on proprietary handlers the administrative assessment on milk received from a cooperative association in its capacity as a handler on plant milk transferred. Proponents testified that the administrative assessment should be borne by the proprietary handler ultimately receiving the milk.

When a cooperative association operates a processing plant or acts in the capacity of a handler diverting milk to nonpool plants or in the limited capacity as responsible handler with respect to farm bulk tank milk which it causes to be picked up at the farm and which is not received at any plant, it, of course, must be held responsible for the assessment payable on such milk.

Marketing service deduction. With respect to payments to producers, the order should provide for a maximum deduction of 6 cents per hundredweight for marketing services furnished by the market administrator. Such deductions are necessary to enable the market administrator. Such deductions are necessary to enable the market administrator to conduct an adequate marketing service program for producers supplying the market.

The maximum rates now for such services are 5 cents under the Cedar Rapids-Iowa City, Des Moines, and North Central Iowa orders, and 6 cents under the Quad Cities-Dubuque order.

The 6-cent rate, which was proposed at the hearing, should permit the market administrator to conduct an adequate marketing service program for those producers not receiving such services (providing for market information to producers and verification of weights, sampling, and testing of milk purchased from producers) from a cooperative association. The average rate now charged under the four markets is slightly above 5 cents per hundredweight. Therefore, a maximum rate of 6 cents should provide adequate funds for these services.

The order should provide for the transfer of funds from a proprietary handler to a cooperative association when the latter is performing the marketing services for producers. The language suggested by proponents would merely direct that no money be withheld in the case of producers for whom a cooperative is performing the marketing services. This would be adequate when the handler pays the cooperative association for the milk and the cooperative then pays the producers. In this case, the cooperative could obviously withhold the marketing service fee. But in the case where the handler pays the producer directly, a provision is needed to provide for the transfer of funds from the handler to the cooperative to cover the marketing services performed. The language adopted herein specifically provides for this transfer of funds, accompanied by a statement showing the quantity of milk for which a deduction was computed for each producer.

Merger of the administrative expense, marketing service, and producer-settlement funds. To accomplish the merger of the orders effectively and equitably, the reserves in the administrative expense funds that have resulted under the four separate orders should be combined. Similar procedure should be followed with respect to the marketing service fund reserves of these individual orders. Any liabilities of such funds under the individual orders should be paid from the appropriate new fund established under the merged order. Similarly, obligations that are due the several funds under the individual orders should be paid to the appropriate combined fund under the merged order.

The money paid to the administrative expense fund is each handler's proportionate share of the cost of administering the order. It is anticipated that all handlers currently regulated under the individual orders will continue to be regulated under the merged order. In view of this, it would be an unnecessary administrative and financial burden to allocate back to handlers the reserve funds under the individual orders and then accumulate an adequate reserve for the merged order. It is more efficient to combine the administrative monies accumulated under the individual orders and to pay any liabilities against such funds from the consolidated fund of the merged order.

The money accumulated in the marketing service funds of the four orders is that which has been paid by producers for whom the market administrator is

performing services. The producers who have contributed to the marketing service fund of each order are expected to continue to supply milk for the Iowa market. The consolidation of the reserves in the individual marketing service funds is therefore appropriate in view of the continuation of the marketing service program for these producers under the merged order.

The producer-settlement fund balances in Orders 63, 70, and 79 should be liquidated and paid out to producers through the blend price computed for the month immediately preceding the month the merged order becomes effective. Since the North Central Iowa market is an individual handler pool market, there is no producer-settlement fund. Consequently, a combining of the producer-settlement fund balances would not be fair to those producers who have contributed to the funds, while it would result in a windfall to producers under Order 78 who have not contributed to a producer-settlement fund.

PROVISIONS REQUIRING NO REVISION

Handlers and producers indicated that provisions of the Des Moines order for which they were proposing no changes were appropriate for the expanded marketing area.

No testimony was presented indicating that the reasons set forth in the decisions providing for the adoption of such provisions were not equally applicable to regulation of the expanded marketing area.

For the reasons previously stated, the remaining unrevised provisions of the order are appropriate for the extended order and are hereby adopted.

RULINGS ON PROPOSED FINDINGS AND CONCLUSIONS

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

GENERAL FINDINGS

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of each of the aforesaid orders and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the Iowa order, which amends and merges the Des Moines, Quad Cities-Dubuque, Cedar Rapids-Iowa City, and North Central Iowa orders, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the Iowa marketing area, and the minimum prices specified in the tentative marketing agreement and the Iowa order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(c) The tentative marketing agreement and the Iowa order will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, the marketing agreements upon which a hearing has been held;

(d) All milk and milk products handled by handlers, as defined in the tentative marketing agreement and the Iowa order, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(e) It s hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1079.85 of the aforesaid tentative marketing agreement and the Iowa order.

RECOMMENDED MARKETING AGREEMENT AND ORDER AMENDING THE ORDER

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the Iowa order. The following order regulating the handling of milk in the Iowa marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

Part 1079 is revised in its entirety, including the heading.

PART 1079—MILK IN THE IOWA MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.
1079.1 General provisions.

DEFINITIONS

1079.2 Iowa marketing area.
1079.3 Route disposition.
1079.4 Plant.
1079.5 [Reserved]
1079.6 [Reserved]
1079.7 Pool plant.
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1079.10 Producer-handler.
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1079.12 Producer.
1079.13 Producer milk.
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HANDLER REPORTS

1079.30 Reports of receipts and utilization.
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CLASSIFICATION OF MILK

1079.40 Classes of utilization.
1079.41 Shrinkage.
1079.42 Classification of transfers and diversions.
1079.43 General classification rules.
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1079.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES

1079.50 Class prices.
1079.51 Basic formula price.
1079.52 Plant location adjustments for handlers.
1079.53 Announcement of class prices.
1079.54 Equivalent price.

UNIFORM PRICE

1079.60 Handler's value of milk for computing uniform price.
1079.61 Computation of uniform price.
1079.62 Announcement of uniform price and butterfat differential.

PAYMENTS FOR MILK

1079.70 Producer-settlement fund.
1079.71 Payments to the producer-settlement fund.
1079.72 Payments from the producer-settlement fund.
1079.73 Payments to producers and to cooperative associations.
1079.74 Butterfat differential.
1079.75 Plant location adjustments for producers and on nonpool milk.
1079.76 Payments by handler operating a partially regulated distributing plant.
1079.77 Adjustment of accounts.
1079.78 Charges on overdue accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1079.85 Assessment for order administration.
1079.86 Deduction for marketing services.

GENERAL PROVISIONS

§ 1079.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1079.2 Iowa marketing area.

"Iowa marketing area" (referred to in this Part as the "marketing area") means all the territory within the boundaries listed below, including all territory that is now, or in the future, occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part of such territory is within the designated geographical limits of the marketing area:

(a) The Iowa counties of:

Adair	Humboldt
Adams	Iowa
Allamakee	Jackson
Appanoose	Jasper
Audubon	Jefferson
Benton	Johnson
Black Hawk	Jones
Boone	Keokuk
Bremer	Linn
Buchanan	Louisa
Butler	Lucas
Calhoun	Madison
Carroll	Mahaska
Cedar	Marion
Cerro Gordo	Marshall
Chickasaw	Monroe
Clarke	Muscatine
Clayton	Pocahontas
Clinton	Polk
Dallas	Poweshiek
Davis	Ringgold
Decatur	Scott
Delaware	Story
Dubuque	Tama
Fayette	Taylor
Floyd	Union
Franklin	Wapello
Greene	Warren
Grundy	Washington
Guthrie	Wayne
Hamilton	Webster
Hancock	Wright
Hardin	

and the city of Osage in Mitchell County.

(b) The Illinois counties of:

Henry	Rock Island
Mercer	

and the city of East Dubuque in Jo Daviess County.

§ 1079.3 Route disposition.

"Route disposition" means any delivery (including any delivery by a vendor or disposition at a plant store) of a fluid milk product classified as Class I milk, other than bulk fluid milk products transferred to other plants.

§ 1079.4 Plant.

"Plant" means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received, processed, or packaged. Separate facilities used only as a distribution point for storing packaged fluid milk products in transit or separate facilities at which milk is only reloaded from one tank truck to another for transshipment shall not be a "plant" under this definition.

§ 1079.5 [Reserved]

§ 1079.6 [Reserved]

§ 1079.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) Any plant (which, if qualified pursuant to this paragraph, shall be known as a "pool distributing plant") that is approved by a duly constituted regulatory agency for the processing or packaging of Grade A milk and from which during the month:

(1) The total route disposition (excluding packaged fluid milk products received from other plants and filled milk) as a percent of the total Grade A fluid milk products received in bulk form at such plant or diverted therefrom by the plant operator is equal to 40 percent or more during each of the months of September through November and 35 percent or more during all other months; and

(2) Not less than 15 percent of such receipts are disposed of as route disposition (except filled milk) in the marketing area.

(b) Any plant (which, if qualified pursuant to this paragraph, shall be known as a "pool supply plant") that is approved by a duly constituted regulatory agency for the handling of Grade A milk and from which during the month the volume of bulk fluid milk products transferred to pool distributing plants during each of the months of September through November is 35 percent or more and during each of the months of December through August is 20 percent or more of the total Grade A milk received at the plant from dairy farmers and handlers described in § 1079.9(c), including milk diverted therefrom by the plant operator pursuant to § 1079.13. For plants located within the States of Iowa, Minnesota, Wisconsin, or that portion of Illinois north of Interstate 80, the shipping requirements of this paragraph may also be met in the following ways:

(1) Upon written request to the market administrator, a cooperative association that operates a supply plant may include as qualifying shipments its deliveries to pool distributing plants directly from farms of producers pursuant to § 1079.9(c);

(2) Upon written request to the market administrator, a proprietary handler may include as qualifying shipments milk diverted pursuant to § 1079.13(d) to pool distributing plants;

(3) Upon written request to the market administrator, the operator of a supply plant may include as qualifying shipments transfers of fluid milk products to distributing plants regulated under other Federal orders, except that credit for such transfers shall be limited to the amount of milk, including milk shipped directly from producers' farms, delivered to pool distributing plants under this order; and

(4) Two or more supply plants operated by the same handler or by one or more cooperative associations may qualify for pooling as a unit by meeting the applicable percentage requirements of this paragraph in the same manner as a single plant if the handler submits a written request to the market administrator prior to the first day of September requesting that such plants qualify as a unit for the period September through August of the following year. (Units may form on the effective date of the merged order. Such units may continue in effect through August 1977.) The request shall list the plants to be included in the unit in the sequence in which they shall qualify for pool plant status based on the minimum deliveries required. If the deliveries made are insufficient to qualify the entire unit for pooling, the plant last on the list shall be excluded from the unit, followed by the plant next-to-last on the list, and continuing in this sequence until the remaining plants on the last have met the minimum shipping requirements. Each plant that qualifies as a pool plant within a unit shall continue each month as a plant in the unit through the following August unless the plant fails subsequently to qualify for pooling or the handler submits a written request to the market administrator prior to the first day of the month that the plant be deleted from the unit or that the unit be discontinued. Any plant that has been so deleted from the unit, or that has failed to qualify in any month, will not be part of the unit for the remaining months through August. No plant may be added in any subsequent month through the following August to a unit that qualifies in September.

(c) Any plant, except a plant included in a unit, that qualified as a pool plant in each of the immediately preceding three months on the basis of performance standards described in paragraph (a) or (b) of this section.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A governmental agency plant;

(3) A plant qualified as a pool plant pursuant to this section if the conditions of paragraph (d)(3) (i) and (ii) of this section are met. Such plant shall be exempt from the provisions of this part except for reports that may be required pursuant to § 1079.30(d) and verification of such reports by the market administrator in accordance with § 1000.5 of this chapter:

(i) The Secretary determines that a greater quantity of fluid milk products in fluid form is disposed of from such plant to a regulated marketing area as defined in another order issued pursuant to the Act either as route disposition, excluding filled milk, or to other order plants qualified on the basis of route disposition, than is disposed of from such plant in the Iowa marketing area either as route disposition, excluding filled milk, or to pool plants qualified on the basis of route disposition; and

(ii) Such milk would be subject to the class price and producer payment provisions of the other order upon being made exempt from this part; and

(4) That portion of a plant that is physically separated from the Grade A portion of such plant, is operated separately, and is not approved by any regulatory agency for the receiving, processing, or packaging of any fluid milk product for Grade A disposition.

§ 1079.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as

defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is not an other order plant, a producer-handler plant, or a governmental agency plant, from which Grade A milk or filled milk is disposed of as route disposition in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is not an other order plant, a producer-handler plant, or a governmental agency plant from which fluid milk products are shipped during the month to a pool plant.

(e) "Governmental agency plant" means a plant that is operated by a government institution and from which fluid milk products are distributed in the marketing area. Such plant shall be exempt from all provisions of this part.

§ 1079.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) Any cooperative association with respect to milk of a producer that is diverted for the account of the cooperative association from a pool plant of another handler in accordance with §1079.13;

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer for delivery to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative association, unless both the cooperative association and the operator of the pool plant notify the market administrator prior to the time that such milk is delivered to the pool plant that the plant operator will be the handler for such milk and will purchase such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by the cooperative association at the location of the pool plant to which such milk is delivered;

(d) Any person who operates a partially regulated distributing plant;

(e) Any person who is a producer-handler;

(f) Any person who operates another order plant described in § 1079.7(d); and

(g) Any person who operates an unregulated supply plant.

§ 1079.10 Producer-handler.

"Producer-handler" means any person who meets all of the following conditions:

(a) Operates a dairy farm and a distributing plant at which Grade A milk of his own production is processed and packaged, and from which there is route disposition in the marketing area;

(b) Receives no milk or fluid milk products at his plant (or at any distribution facility, including routes, operated by him, an affiliate, or any person who controls or is controlled by him) from the farms of other dairy farmers nor from any other source, except receipts of not more than 50,000 pounds of fluid milk products during the month from pool plants or from other order plants;

(c) Receives no nonfluid milk products from any source for use in reconstituting fluid milk products; and

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary for his own farm production and the operation of the processing and packaging business are the personal enterprise and risk of such person.

§ 1079.11 [Reserved]

§ 1079.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk approved by a duly constituted regulatory agency for disposition as Grade A milk and whose milk is:

(1) Received at a pool plant directly from such person;

(2) Received by a handler described in § 1079.9(c); or

(3) Diverted from a pool plant in accordance with § 1079.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him that is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1079.44 (a)(8)(iii) and the corresponding step of § 1079.44 (b);

(3) Any person with respect to milk produced by him that is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order; and

(4) Any government institution which produces milk in conjunction with the operation of a plant exempt from all provisions of this Part pursuant to § 1079.8(e).

§ 1079.13 Producer milk.

"Producer milk" means the skim milk and butterfat in milk of a producer that is:

(a) Received at a pool plant directly from such producer by the operator of the plant;

(b) Received by a handler described in § 1079.9(c);

(c) Picked up from the producer's farm tank in a tank truck owned and operated by, or under the control of, the operator of a pool plant but which is not received at a plant until the following month. Such milk shall be considered as having been received by the handler during the month in which it is picked up at the producer's farm and shall be priced at the location of the plant where it is physically received in the following month. This paragraph shall apply in like manner to milk received by the operator of a pool plant who, in accordance with § 1079.9(c), is the handler for such milk;

(d) Diverted from the pool plant of a proprietary handler for the account of the handler operating such plant to another pool plant or diverted from a pool plant to a nonpool plant (other than a producer-handler plant) for the account of the handler operating such pool plant or for the account of a handler described in § 1079.9(b), subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion under this section unless during the month at least one day's production of milk of such dairy farmer is physically received as producer milk at a pool plant;

(2) The total quality of milk diverted by a cooperative association during the month may not exceed 50 percent in the months of September through November and 70 percent in other months, of the producer milk that the cooperative association causes to be delivered to or diverted from pool plants during the month;

(3) The operator of a pool plant (other than a cooperative association) may divert for his account any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d)(2) of this section. The total quantity so diverted during the month may not exceed 50 percent in the months of September through November, and 70 percent in other months, of the milk received at or diverted from such pool plant during the month that is eligible to be diverted by the plant operator;

(4) Any milk diverted in excess of the limits prescribed in paragraph (d)(2) and (3) of this section shall not be producer milk. The diverting handler may designate the dairy farmers whose diverted milk will not be producer milk, otherwise the milk last diverted—in lots of an entire day's production—shall be excluded first in determining which milk should not be producer milk; and

(5) Diverted milk shall be priced at the location of the plant to which diverted.

§ 1079.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1079.40(b)(1) from any source other than producers, handlers described in § 1079.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1079.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1079.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1079.40(b)(1) for which the handler fails to establish a disposition.

§ 1079.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1079.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1079.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milk fat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1079.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) Is qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act;"

(b) Has full authority in the sale of milk of its members and is engaged in making collective sales of or marketing milk or its products for its members; and

(c) Has its entire activities under the control of its members.

HANDLER REPORTS

§ 1079.30 Reports of receipts and utilization.

On or before the 8th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1079.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1079.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1079.9(b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1079.31 Payroll reports.

(a) On or before the 22nd day of each month, each handler described in § 1079.9(a), (b), and (c) shall report to the market administrator his producer payroll for the preceding month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1079.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1079.32 Other reports.

In addition to the reports required pursuant to §§ 1079.30 and 1079.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1079.40 Classes of utilization.

Except as provided in § 1079.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1079.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in

paragraph (b) (1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b) (1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b) (1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In fluid milk products destroyed or lost under extraordinary circumstances;

(6) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1079.15; and

(7) In shrinkage assigned pursuant to § 1079.41(a) to the receipts specified in § 1079.41(a) (2) and in shrinkage specified in § 1079.41 (b) and (c).

§ 1079.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1079.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat;

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a) (1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1079.9(c) and in milk diverted to such plant from another pool plant, except that, in either case, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (2), (4), (5) and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1079.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1079.42 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computations pursuant to § 1079.44 (a) (12) and the corresponding step of § 1079.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1079.44(a) (7) or the corresponding step of § 1079.44(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1079.44(a) (11) or (12) or the corresponding steps of § 1079.44(b), the skim milk or butterfat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or divertee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section;

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b) (3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1079.40.

(c) *Transfers to producer-handlers and transfers and diversions to governmental agency plants.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted to a governmental agency plant shall be classified:

(1) As Class I milk, if transferred or diverted in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat, transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or a governmental agency plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1079.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route dispostion in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in paragraph (d)(2) of this section.

(e) *Transfers by a handler described in § 1079.9(c) to pool plants.* Skim milk and butterfat transferred in the form of bulk milk by a handler described in § 1079.9(c) to another handler's pool plant shall be classified pursuant to § 1079.44 pro rata with producer milk received at the transferee-handler's plant.

§ 1079.43 General classification rules.

In determining the classification of producer milk, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1079.30 and shall compute separately for each pool plant, and for each cooperative association with respect to milk for which it is the handler pursuant to § 1079.9 (b) or (c) that was not received at a pool plant, the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1079.40, 1079.41, and 1079.42. The combined pounds of skim milk and butterfat so determined in each class for a handler described in § 1079.9 (b) or (c) shall be such handler's classification of producer milk;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1079.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1079.44 Classification of producer milk.

For each month the market administrator shall determine for each handler described in § 1079.9(a) for each of his separate pool plants the classification of producer milk and milk received from a handler described in § 1079.9(c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1079.41 (b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1079.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) For a pool plant that was subject to § 1079.40(b)(1) or comparable provisions of another Federal order in the immediately preceding month, subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1079.40(b)(1) that

were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1079.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1079.40b(1) that was not subtracted pursuant to paragraphs (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from a governmental agency plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1079.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1079.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8)(i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to paragraph (a)(11) of this section exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to paragraph (a)(11) of this section exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraphs (a)(7)(vi) and (a)(8)(iii) of this section:

(i) Subject to the provisions of paragraphs (a)(12) (ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1079.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all poolplants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at

all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computation pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1079.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, and milk received from a handler described in § 1079.9(c), subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk and milk received from a handler described in § 1079.9(c) in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1079.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1079.44(a)(12) and the corresponding step of § 1079.44(b), estimate and publicly announce on or before the 12th day of the month the Class I utilization (to the nearest whole percentage) during the previous month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1079.44 on the basis of such report, and thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 14th day after the end of each month, report to each cooperative association which so requests, the class utilization of producer milk received by each handler from a cooperative association or from members of the association. For the purpose of this report, the milk caused to be delivered by an association shall be prorated to each class in the proportion that the total receipts of milk received from producers by such handler were used in each class.

Class Prices

§ 1079.50 Class prices.

Subject to the provisions of § 1079.52, the class prices for the month per hundredweight of milk shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.40.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1079.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1079.52 Plant location adjustments for handlers.

(a) The following zones are defined for the purpose of determining location adjustments:

(1) Zone 1 shall include that terirtory, both inside and outside the marketing area, not included in Zones 2 and 3.

(2) Zone 2 shall include:

(i) The Iowa counties of Benton, Cedar, Clinton, Iowa, Johnson, Jones, Keokuk, Linn, Louisa, Marshall, Muscatine, Poweshiek, Scott, Tama, and Washington; and

(ii) The Illinois counties of Henry, Mercer, and Rock Island.

(3) Zone 3 shall include:

(i) The Iowa counties of Alamakee, Black Hawk, Bremer, Buchanan, Butler, Cerro Gordo, Chickasaw, Clay, Clayton, Delaware, Dickinson, Dubuque, Emmet, Fayette, Floyd, Franklin, Grundy, Hamilton, Hancock, Hardin, Howard, Humboldt, Jackson, Kossuth, Mitchell, Palo Alto, Pocahontas, Webster, Winnebago, Winneshiek, Worth and Wright; and

(ii) The States of Minnesota and Wisconsin and that portion of Illinois that is north of Interstate 80.

(b) For milk received at a plant from producers or from a handler described in § 1079.9(c) and which is classified as Class I milk without movement in bulk form to a pool distributing plant, the price specified in § 1079.50(a) shall be adjusted as follows:

(1) In Zone 1, no adjustment;

(2) In Zone 2, minus 7 cents; and

(3) In Zone 3, the price shall be reduced by 7 cents and by an additional 1.5 cents for each 10 miles or fraction thereof (by shortest hard-surfaced highway distance as measured by the market administrator) that such plant is located from the nearer of the Post Offices of Ames, Marshalltown, or Cedar Rapids, Iowa.

(c) The Class I price applicable to other source milk shall be adjusted by the amounts set forth in paragraph (b) of this section, except that the adjusted Class I price shall not be less than the Class III price.

(d) For fluid milk products transfered in bulk from a pool plant to a pool distributing plant, a Class I location adjustment credit for the transferor-plant shall be determined by the market administrator as follows:

(1) Multiply the pounds of Class I milk at the transferee-plant after the

computations pursuant to § 1079.44 (a) (12) and (b) by 110 percent;

(2) Subtract the pounds of fluid milk products received at the transferee-plant from producers and handlers described in § 1079.9(c) from the total pounds computed in paragraph (d)(1) of this section; and

(3) Assign the pounds computed in paragraph (d)(2) of this section pro rata to the bulk receipts of fluid milk products from each transferor pool plant.

§ 1079.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and III prices for the preceding month.

§ 1079.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constitutent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1079.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1079.9 (b) and (c) with respect to milk that was not received at a pool plant as follows:

(a) Multiply the pounds of producer milk and milk received from a handler described in § 1079.9(c) in each class as determined pursuant to § 1079.43(a) and § 1079.44(c) by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1079.44(a)(14) and the corresponding step of § 1079.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1079.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1079.44(a)(9) and the corresponding step of § 1079.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to §1079.44(a)(7)(i) through (iv) and the corresponding step of § 1079.44 (b), excluding receipts of bulk fluid cream products from another order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1079.44(a)(7)(v) and (vi) and the corresponding step of § 1079.44 (b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1079.44(a)(11) and the corresponding step of § 1079.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(g) Subtract, for a handler described in § 1079.9(c), the amount obtained from multiplying the Class III price for the preceding month by the hundredweight of skim milk and butterfat contained in inventory at the beginning of the month that was delivered to another handler's pool plant during the month.

§ 1079.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight of producer milk of 3.5 percent butterfat content at plants in Zone 1 pursuant to paragraphs (a) through (e) of this section. If the unreserved cash balance in the producer-settlement fund to be included in the computation is less than 2 cents per hundredweight of producer milk on all reports, the report of any handler who has not made the payments required pursuant to § 1079.71 for the preceding month shall not be included in the computation of the uniform price. The report of such handler shall not be included in the computation for succeeding months until he has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the uniform price in the following manner:

(a) Combine into one total the values computed pursuant to § 1079.60 for all handlers;

(b) Add an amount equal to the sum of the location adjustments computed pursuant to § 1079.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight of milk for which a value is computed pursuant to § 1079.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (d) of this section. The result shall be known as the uniform price for milk received from producers.

§ 1079.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1079.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1079.71, 1079.76, and 1079.77 and out of which he shall make all payments due handlers pursuant to §§ 1079.72 and 1079.77: *Provided*, That the market administrator shall offset any payments due any handler against payments due from such handler.

§ 1079.71 Payments to the producer-settlement fund.

(a) On or before the 15th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1079.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1079.75, of such handler's receipts of producer milk and milk received from a handler described in § 1079.9(c). In the case of a handler described in § 1079.9(c), less the amount due from other handlers pursuant to § 1079.73, exclusive of differential butterfat values; and

(ii) The value at the uniform price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1079.60(f).

§ 1079.72 Payments from the producer-settlement fund.

On or before the 17th day after the end of the month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1079.71(a)(2) exceeds the amount computed pursuant to § 1079.71(a)(1): *Provided*, That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such pay-

ments and shall complete such payments as soon as the necessary funds become available.

§ 1079.73 Payments to producers and to cooperative associations.

(a) On or before the last day of the month, each handler shall pay for milk received from producers and cooperative associations during the first 15 days of the month as follows:

(1) If received from a cooperative association that is a handler pursuant to § 1079.9(a), at not less than the uniform price at the transferee plant location for the preceding month, adjusted by the butterfat differential for the preceding month;

(2) If received from a cooperative association that is a handler pursuant to § 1079.9(c), at not less than the uniform price for the preceding month, adjusted by the location adjustments specified in § 1079.75;

(3) If received from a cooperative association that is not a handler but which is authorized to collect payment on behalf of its member producers and has requested that payment be made to it in aggregate, at not less than the uniform price for the preceding month, adjusted by the location adjustments specified in § 1079.75; and

(4) If received from a producer for whom payment is not being made pursuant to paragraph (a) (2) or (3) of this section and who has not discontinued shipping to such handler, at not less than the uniform price for the preceding month, adjusted by the location adjustments specified in § 1079.75.

(b) On or before the 12th day after the end of the month, each handler shall pay for milk received during the month from a cooperative association which is a handler pursuant to § 1079.9(a) at not less than the value of such milk computed at the applicable class prices for the month, as adjusted by the butterfat differential specified in § 1079.74 and plant location adjustments specified in § 1079.52, less the partial payment pursuant to paragraph (a) of this section.

(c) On or before the 18th day after the end of the month, each handler shall make a final payment for milk received during the month from producers and cooperative associations that were not handlers for such milk pursuant to § 1079.9(a). The amount of such payment shall be computed by multiplying the hundredweight of milk received from the producer or cooperative association by not less than the uniform price for the month (as adjusted by the butterfat differential specified in § 1079.74 and the location adjustments specified in § 1079.75) and by subtracting from this product any payment made to such producer or cooperative pursuant to paragraph (a) of this section. Those producers and cooperative associations covered by this paragraph include:

(1) A cooperative association that is a handler pursuant to § 1079.9(c);

(2) A cooperative association that is not a handler but which is authorized to collect payment on behalf of its member producers and has requested that payment be made to it in aggregate; and

(3) A producer for whom payment is not being made pursuant to paragraph (c)(1) or (2) of this section.

(d) In making payments pursuant to paragraph (a)(3) and (4) and (c)(2) and (3) of this section, deductions may be made for marketing service pursuant to § 1079.86 and for any proper deductions authorized in writing by the producer. In the event a handler has not received full payment from the market administrator pursuant to § 1079.72 by the 18th day of the month, he may reduce pro rata his payments to producers pursuant to paragraph (c) of this section by not more than the amount of such underpayment. Following receipt of the balance due from the market administrator, the handler shall complete payments to producers not later than the next payment date provided under this section.

(e) In making payment to individual producers as required by this section, each handler shall furnish each producer from whom he received milk a supporting statement, in such form that it may be retained by the producer, which shall show:

(1) The month involved, and the identity of the handler and of the producer;

(2) The total pounds and the average butterfat content of the milk received from the producer;

(3) The minimum rate at which payment to the producer is required pursuant to this section;

(4) The rate used in making the payment, if such rate is other than the applicable minimum;

(5) The amount (or rate) per hundredweight of each deduction claimed by the handler, including any deduction claimed under § 1079.86, together with a description of the respective deductions; and

(6) The net amount of the payment to the producer.

§ 1079.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1079.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk received at a pool plant or diverted from a pool plant shall be adjusted according to the location of the plant of actual receipt at the rates set for in § 1079.52.

(b) The uniform price applicable to other source milk shall be reduced at the rates set forth in § 1079.52, except that the adjusted uniform price shall not be less than the Class III price.

§ 1079.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1079.30(b) and 1079.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition of fluid milk products in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition of fluid milk products in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1079.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which

such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1079.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective orders; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1079.60 for such handler shall include, in lieu of the value of other source milk specified in § 1079.60(f) less the value of such other source milk specified in § 1079.71(a)(2)(ii), a value of milk determined pursuant to § 1079.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1079.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1079.30(b) and 1079.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1079.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1079.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1079.74, for milk received at the plant during the month that would have been producer milk of the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1079.77 Adjustment of accounts.

(a) Whenever verification by the market administrator of reports or payments by any handler discloses errors in payments to the producer-settlement fund pursuant to § 1079.71, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 5 days of such billing, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, the market administrator shall, within 5 days, make payments to such handler.

(b) Whenever verification by the market administrator of the payments by a handler to any producer or cooperative association discloses payment of less than is required by § 1079.73, the handler shall pay the balance due such producer or cooperative association not later than the time for making payments next following such disclosure.

§ 1079.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1079.71, 1079.76, 1079.77 (a), and 1079.85, for which remittance has not been made (or, if mailed, postmarked) by the date specified for such payment, shall be increased three-fourths of 1 percent, and any remaining amount due shall be increased at a similar rate on the corresponding day of each month thereafter until paid. The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid charges previously made pursuant to this section; and for the purpose of this section any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

Administrative Assessment and Marketing Service Deduction

§ 1079.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Receipts of producer milk (including such handler's own production) other than:

(1) Receipts of producer milk by a handler described in § 1079.9(c) that were delivered to pool plants of other handlers; and

(2) Receipts of producer milk that were transferred to pool plants of other handlers by a cooperative association in its capacity as a handler pursuant to § 1079.9(a);

(b) Receipts from a handler described in § 1079.9(c);

(c) Receipts from a cooperative association in its capacity as a handler pursuant to § 1079.9(a);

(d) Other source milk allocated to Class I pursuant to § 1079.44(a)1(7) and (11) and the corresponding steps of § 1079.44(b), except such other source milk that is excluded from the computations pursuant to § 1079.60 (d) and (f); and

(e) Route dispostion in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat specified in § 1079.76(a)(2).

§ 1079.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments directly to producers (other than himself) pursuant to § 1079.73, shall deduct 6 cents per hundredweight, or such lesser amount as the Secretary may prescribe with respect to all milk received from producers' farms during the month, and shall pay such deductions to the market administrator on or before the 15th day after the end of such month. Such moneys shall be expended by the market administrator to provide for market information and to verify the weights, samples, and tests of milk of producers who are not receiving such services from a cooperative association.

(b) In the case of producers for whom a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers and on or before the 15th day after the end of each month shall pay such deductions to the cooperative association rendering such services, accompanied by a statement showing the quantity of milk for which a deduction was computed for each producer.

Inflation Impact Statement. The United States Department of Agriculture has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Signed at Washington, D.C., on December 29, 1976.

Donald E. Wilkinson,
Administrator.

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